

TOWN OF ALLEGANY
ZONING ORDINANCE III



Effective Date: October 11, 2016
Amended: April 11, 2023

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**ZONING ORDINANCE III OF THE TOWN OF ALLEGANY, NEW YORK
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ZONING ORDINANCE III
OF THE TOWN OF ALLEGANY
CATTARAUGUS COUNTY, NEW YORK

Effective Date: October 11, 2016

Amended: April 11, 2023

Adopted by the Allegany Town Board
October 11, 2016

John E. Hare, Supervisor
David Koebelin, Councilman
Kathy Martin, Councilman
Jim Hitchcock, Councilman
Robert Parker, Councilman
Wendy Tuttle, Town Attorney

Recommended by the Planning Board of the Town of Allegany
November 9, 2015

Frank R. DeFiore, Chairman
E. Peter Hellier, Member
Rick Kavanagh, Member
Helen Larson, Member
John Sayegh, Member
Carol Horowitz, Town Planner

ARTICLE I GENERAL PROVISIONS

Section 1.01 Enacting Clause

Pursuant to the authority conferred by Article 16 of the Town Law of the State of New York and for each of the purposes specified therein, the Town Board of the Town of Allegany, County of Cattaraugus and State of New York has ordained and does hereby enact this Zoning Ordinance regulating and restricting the location, size and use of buildings and other structures and the use of land in the Town of Allegany.

Section 1.02 Short Title

This law shall be known as the "Town of Allegany Zoning Ordinance III" and is referred to herein as "this Ordinance" or "this Zoning Ordinance."

Section 1.03 Effective Date

The effective date of this Zoning Ordinance shall be October 11, 2016.

Section 1.04 Severability

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

Section 1.05 Intent and Purpose

(A) Intent

The intent of the Town of Allegany, in its adoption of this Zoning Ordinance, is to promote and protect, to the fullest extent practicable, the environment of the Town and the public health, safety, and general welfare of the people. To accomplish this intent, in accordance with the Town's Comprehensive Plan, the Town Board finds it necessary and advisable to divide the area of the Town of Allegany into districts or zones, and to regulate the following elements of land use and development:

- (1) The location, spacing, size, height, and use of buildings and other structures, in relation to surrounding properties and uses.

- (2) The percentage of lot area which may be occupied, building setback lines, the sizes of yards, courts and other open spaces, and overall site plans.
- (3) The use of land for trade, industry, residences, recreation, public facilities and other purposes.
- (4) It is further the intent of this Zoning Ordinance to incorporate the land use-related goals of the Route 417 Corridor Management Plan, which are:
 - (a) Improve traffic safety and pedestrian conditions.
 - (b) Improve visual attractiveness.
 - (c) Encourage innovative, quality architectural and site design.
 - (d) Enhance the Town's tax base.
 - (e) Minimize land use conflicts.

(B) Purpose

The purpose of this Zoning Ordinance is to provide a legal tool through which the community can guide future growth and land development in an orderly fashion, in accordance with the Town of Allegany Comprehensive Plan.

(C) Objectives. This Ordinance is designed to achieve, but is not limited to, the following objectives:

- (1) To guide the future development of the Town in accordance with its Comprehensive Plan and this Zoning Ordinance. The regulations of this Ordinance are made with reasonable consideration of the character of each zoning district, its suitability for particular uses and the direction of development trends, and with a view encouraging the most appropriate use of land throughout the Town.
- (2) To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas.
- (3) To achieve a balance of population densities within the Town by regulating the types and intensities of land uses in each zoning district, to prevent overcrowding of the land and excessive concentration of population in any section of the Town that cannot adequately accommodate such land use intensity, and to prevent uncoordinated, strip development along the Town's rural highways.
- (4) To lessen or avoid congestion in the public streets and highways, to facilitate the adequate provision of transportation circulation and off-street parking facilities, and to protect the right of land access.
- (5) To establish zoning patterns that ensure economical extensions for sewers, water supply, waste disposal and other public utilities, as well as the development of recreational, educational and other public services in appropriate locations.

- (6) To encourage the protection and appropriate use of the Allegheny River shoreline as a unique resource within the Town of Allegany.
- (7) To protect persons and property from damage and injury due to fire or flood, by respecting and implementing the purposes and scope of the Federal Flood Insurance Study for the Town and all amendments thereto, as a guide to orderly flood plain management in the Town of Allegany and as a means of minimizing flood losses in areas subject to periodic inundation.
- (8) To preserve and promote the general attractiveness of the community and to assure that structures and land use arrangements are functionally and aesthetically harmonious with nearby structures and land uses.
- (9) To preserve and protect the environment and its wildlife, and significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when environmental resources are eliminated or substantially altered to serve development purposes only.
- (10) To provide uniform and adequate procedures for the administration of this Zoning Ordinance.

Section 1.06 Interpretation

(A) Minimum requirements

The provision of this Zoning Ordinance shall be held to be the minimum requirements for the promotion of the public health, safety and general welfare, and shall apply uniformly within each district.

(B) Relationship to other Laws

- (1) Where the conditions imposed by this Zoning Ordinance are either more or less restrictive than conditions imposed by or any other law, ordinance, resolution, or regulation, the more restrictive regulation shall govern.
- (2) The provisions of this Ordinance are in addition to all other Town ordinances and laws, the Laws of the State of New York, the Laws of the United States, and applicable common law.
- (3) This Ordinance shall not supersede, annul or abrogate any private land use regulation in deeds or covenants that are more restrictive than this Ordinance.
- (4) Regardless of any other provision of this Ordinance, no land shall be used and no structure erected or maintained in violation of any state or federal pollution control or environmental protection law or regulation.

Section 1.07 Application of Regulations

(A) Application. Except as herein after provided:

- (1) No building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the regulations herein specified for the district in which it is located.
- (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 narrower or smaller rear yards, front yards, side yards, inner or outer courts than is specified herein for the district in which such building is located.
- (3) No part of a yard or other open space about any building required for the purpose of complying with the provisions of this Ordinance shall be included as 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.
- (5) No required yard shall be separated in ownership from that portion of the lot on which a structure is located.

(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 buildings or use and the property on which it is located.

(C) Exemptions

Municipal Buildings and Uses. This Ordinance shall not apply to any building of the municipality if the municipal governing body shall decide that such building or extension thereof or such use of any premises, is reasonably necessary for the convenience or welfare of the public, provided that any municipal recreational building or use may be established by the municipality at any location in the municipality without holding a public hearing.

Section 1.08 Fees

A schedule of fees for all permits and applications required by this Ordinance shall be set by the Town of Allegany Town Board by resolution. The schedule of fees may be revised from time to time.

Section 1.09 Incentive Zoning

(A) Purpose

The purpose of these incentive zoning provisions is to empower the Town Board to grant incentives in exchange for certain amenities that advance the Town's specific physical, environmental, social or cultural policies in accordance with the Town's Comprehensive Plan and with the Route 417 Corridor Management Plan.

(B) Applicability

These incentive zoning provisions shall apply to all zoning districts in the Town of Allegany.

(C) Allowable Amenities

- (1) If a project proponent commits to provide one or more of the amenities (community benefits) listed in this sub-section, the Town Board, as an incentive to provide these additional amenities, may approve one or more of the incentives (bonuses) listed in Section 1.09(D). The amenities may be provided on or off the site to which the incentives are applicable. The amenities provided shall be in addition to any mandated requirements of this Zoning Ordinance.
- (2) The following Amenities may be accepted from the applicant by the Town:
 - (a) Permanent conservation of natural areas or agricultural lands.
 - (b) Provision of passive/active open space.
 - (c) Infrastructure improvements (sewer, water), including extending services into a previously unserved area.
 - (d) Road and highway improvements in excess of those required to mitigate proposed impacts.
 - (e) Provision of trail linkages.
 - (f) Permanent preservation of important scenic viewsheds.
 - (g) Provision of cross access easement or shared access.
 - (h) Housing for persons of low or moderate income
 - (i) Parks

(D) Allowable Incentives

- (1) As an incentive for the provision of one or more of the amenities listed in Section 1.09(C), above, the Town Board may approve one or more of the following incentives:
 - (a) Reduction in minimum lot size or lot width for non-residential development.
 - (b) Increases in lot coverage.
 - (c) Changes in setback or height standards.
 - (d) Change of use.

- (e) Reduction in size of required buffer area.
 - (f) Reduction in the required number of parking spaces.
- (2) If granted, the incentive(s) shall apply only to the specific site for which approval was granted.

(E) Criteria and Procedure for Application Review

- (1) Applications for incentives in exchange for amenities shall be submitted to the Code Enforcement Officer, who shall forward them to the Town Board. The applicant shall provide the following information with the request:
- (a) A narrative which:
 - i. Describes the proposed amenity and its cash value.
 - ii. Describes the benefits to be provided to the community by the proposed amenity.
 - iii. Provides a preliminary indication that there are adequate sewer disposal facilities, water, roadways, waste disposal and fire protection facilities in the zoning district in which the proposal is located in order to accommodate additional demands, if any.
 - iv. Explains how the proposed amenity promotes the implementation of the physical, environmental, social or cultural policies articulated in the Town's Comprehensive Plan and/or in the Route 417 Corridor Management Plan.
 - v. Describes the requested incentive and its value.
 - (b) Two sets of maps of the proposed project. One shall show a layout of the proposed development conforming to current Ordinance requirements. The other shall show the development if the requested incentive(s) were to be granted. The maps do not have to show the amount of detail that would be required for site plan review, but shall show a sufficient level of detail so that the scope of the project is understandable.
 - (c) Completed Environmental Assessment Form, pursuant to SEQR regulations.
 - (d) Any application for incentives shall include payment of a proportionate share of the cost of preparing a generic environmental impact statement, as required by Section 261-b(3)(d) of New York Town Law. This payment is in addition to any site-specific charge made pursuant to the provisions of section 8-0109 of the Environmental Conservation Law.
 - (e) Any other material the Town Board deems necessary for an adequate review of the proposal.
- (2) The Town Board shall consider the submission and shall determine whether further review is warranted. If the Town Board determines that further review is warranted, it shall refer the application to the Planning Board for its review and recommendation.

- (3) The Planning Board shall consider the provisions of this section; the planning, design and layout considerations involved with the project; and any other issues that the Town Board included in the referral.
- (4) Within 62 days from the date of the referral by the Town Board, or such other longer time as the Town Board may establish, the Planning Board shall report back to the Town Board. The Planning Board shall review the proposal and shall report its opinion on the following questions:
 - (a) Whether the proposed amenity/incentive exchange is consistent with the Town's Comprehensive Plan and/or with the Route 417 Corridor Management Plan.
 - (b) Whether the proposed amenity/incentive exchange is suitable for the site.
 - (c) Whether the proposed amenity/incentive exchange is compatible with adjoining land uses and improvements.
 - (d) Whether the proposed amenity/incentive exchange is in the best interest of the Town.
- (5) Following review and consideration of the Planning Board's report, the Town Board shall determine if further consideration of the proposal is warranted. The Town Board shall notify the applicant of its determination.
 - (a) If the Town Board determines that the incentive zoning application is not feasible, not in the best interests in the Town, or is otherwise not worth pursuing, review of the application shall end. The reasons for the Town Board's decision shall be recorded in the minutes of the meeting at which the decision occurred and shall be provided to the applicant in writing within five (5) days of the decision.
 - (b) If the Town Board determines that further review of the proposal is warranted, it shall set a date for a public hearing on this issue. Notice of the public hearing shall be published in the Town's official newspaper at least five days prior to the date thereof. The Town Board may also provide for other notice of the public hearing.
- (6) After the close of the public hearing and completion of the SEQR process, the Town Board may approve, approve with modifications, or deny the proposed incentive zoning application. Such action shall include a statement of findings that:
 - (a) All requirements of SEQR have been met and that there are no significant adverse environmental impacts due to the granting of the incentive(s).

- (b) The proposed project, including the incentive(s), can be supported adequately by public or private facilities available or provided as a result of the project, including sewerage disposal, water supply, transportation, including the roadway system, waste disposal and fire protection, without diminishing the availability of such services for projects permitted as a matter of course.
- (c) The incentive(s) are compatible with the development otherwise permitted.
- (d) The public benefit is compatible with the purpose and intent of this Ordinance; that the amenity is sufficiently advantageous to make it appropriate for the grant of the requested incentive; and that the amenity will enhance the long-range asset-base of the Town.
- (e) The use of incentive zoning in this particular instance is consistent with the Town's Comprehensive Plan and/or with the Route 417 Corridor Management Plan.

(F) Requirement for Site Plan and/or Subdivision Approval

Following approval by the Town Board of an incentive zoning application (either with or without modification), the applicant shall submit application(s) for site plan review and/or subdivision review to the Planning Board, if such review would otherwise be required by the Zoning Ordinance or Land Division Regulations.

(G) Cash payment in lieu of amenity

- (1) If the Town Board determines that a suitable amenity is not immediately feasible or otherwise not practical, the Board may require, in lieu thereof, a payment to the Town of a sum to be determined by the Board. These funds shall be placed in a trust fund to be used by the Town Board exclusively for amenities specified prior to the acceptance of the funds. Cash payments in lieu of amenities shall not be used to pay general and ordinary governmental operating expenses.
- (2) Cash in lieu payments shall be made to the Town prior to the issuance of any building permits for the project.

ARTICLE II RULES AND DEFINITIONS

Section 2.01 Rules

The following rules shall apply when interpreting the text of this Ordinance.

- (A) Words used in the present tense include the future tense.
- (B) Words used in the singular include the plural, and words used in the plural include the singular.
- (C) The word "person" includes any individual, trust, association, firm, company, organization, partnership or corporation.
- (D) The word "he" includes the word "she."
- (E) The words "shall," "must" or "will" are mandatory. The word "may" is permissive. The word "should" is to be interpreted as expressing that which is desired and essential, but is not mandatory.
- (F) The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for" and "occupied for."
- (G) The phrases "to erect," "to construct" and "to build" shall have the same meaning and shall include the excavation for a building foundation and the relocation of a building from one location to another.
- (H) The word "structure" shall include the word "building."
- (I) The word "lot" includes the word "plot," "piece" and "parcel."

Section 2.02 Definitions of Terms

The following words and terms, wherever they occur in this Zoning Ordinance, shall be interpreted as herein defined. Words used in this Ordinance but not defined herein shall have the meaning as defined in any other local law, ordinance, or code adopted by the Town, or in common usage if they are not otherwise defined in Town law.

A WEIGHTED SOUND PRESSURE LEVEL - The sound pressure level measured in decibels (dBA) and is equal to 20 times the logarithm to the base 10 of the ratio of root mean square sound pressure to a reference sound pressure, weighted by frequency band following standard procedures. The reference sound pressure in air is $2 * 10^{-5}$ Pascals. The measurement of the

sound pressure level may be done according to the American National Standard, Quantities and Procedures for Description and Measurement of Environmental Sound (ANSI/ASA S12.9-1993, Parts 1,2 and 3, Reaffirmed by ANSI April 2008), published by the Acoustical Society of America (ASA) and the American National Standards Institute (ANSI), or other accepted procedures.

ABANDONMENT - To cease or discontinue a use or activity.

ACCESSORY BUILDING - See "Building, Accessory."

ACCESSORY STRUCTURE - See "Structure, Accessory."

ACCESSORY USE - See "Use, Accessory."

ADULT DAY CARE CENTER - A facility providing care for the elderly and /or functionally impaired adults in a protective setting for periods of less than 24 hours per day.

ADULT USES - Any use or establishment constituting an adult body painting studio, adult entertainment cabaret, adult massage establishment, adult model studio, adult motel, adult retail store, adult theater, adult video store, and/or peep show, as defined herein, or similar use that excludes any minor by reason of age.

ADULT BODY PAINTING STUDIO - An establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body and which excludes minors by reason of age.

ADULT ENTERTAINMENT CABERET - A public or private nightclub, bar, restaurant or similar establishment which presents topless or bottomless dancers, go-go dancers, strippers, male or female impersonators, exotic dancers or other similar entertainment, and which establishment excludes any minor by reason of age.

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

ADULT MODEL STUDIO - Any establishment where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed or similarly depicted by persons other than the proprietor, paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual firm, association,

partnership, corporation or institution which meets the requirements established in the NYS Education Law for the issuance or conferring of and is in fact authorized to issue or confer a diploma.

ADULT MOTEL - A motel which excludes minors by reason of age or which make available to its patrons in their rooms films, slide shows or videotapes which if presented in a public movie theater would exclude any minor by reason of age.

ADULT RETAIL STORE - A business establishment that offers for sale sexually oriented materials, toys and/or novelties and which excludes any minor by reason of age. For purposes of this definition, *sexually oriented toys and novelties* are defined as instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs, except medical devices approved by the US Food and Drug Administration. For purposes of this definition, *sexually oriented materials* are defined as toys, novelties, books, pamphlets, magazines and other periodicals, sculptures, photographs, pictures, slides, video tapes, films, CDs, CD-ROMs, DVDs, magnetic and digital media, electronic reproductions, pictorial representations, sound recordings and similar materials that have sexually explicit content.

Exception: A business enterprise which devotes less than ten percent of the stock-in-trade and/or less than ten percent of its sales and display floor area to sexually oriented materials, toys and/or novelties and which keeps all sexually oriented toys, novelties, and materials separated from other sales and display areas by an opaque wall at least eight feet in height with a management- controlled system of access to ensure that only persons over the age of 18 years are allowed to enter the area shall not be considered an Adult Retail Store. Any such excluded business shall not advertise sexually oriented materials as part of its exterior signage.

ADULT THEATER - A theater that customarily presents motion pictures, films, DVDs, videotapes or slide shows and which excludes minors by reason of age.

ADULT VIDEO STORE - An establishment having as a substantial or significant portion of its stock in trade, videotapes, DVDs, or films for sale or viewing on premises by use of motion picture devices, video equipment or other coin operated means and which establishment excludes any minor by reason of age.

PEEP SHOW - A theater which presents material in the form of live shows, films, DVDs or videotapes viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.

AGRICULTURAL USE - The raising of agricultural products including livestock, poultry, dairy products, farm crops, fruit, vegetables, cultivated plants and nursery stock, whether for gain or otherwise.

AIRPORT, PRIVATE - An area of land arranged, intended or designed for the landing or taking off of aircraft owned by individual owner or lessor of said lands and/or his bona fide guests. The landing area shall not be equipped with facilities for the supplying, servicing and/or repairing of aircraft thereon or the receiving or discharging of passengers or cargo by air for hire.

ALTERATION - As applied to a building or structure, a change or rearrangement in the structural parts or in the exit facilities of such building or structure, or any enlargement thereof, whether by extension on any side, front or rear or by any increase in height, or the moving of such building or structure from one location to another.

ALTERNATIVE FUEL STATION - See "Gas and Alternative Fuel Station."

ALTERNATIVE TOWER STRUCTURE - Man-made trees, buildings, clock towers, bell steeples, light poles and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

AMENITIES - Open space, housing for persons of low or moderate income, infrastructure improvements, parks, elder care, day care or other specific physical, social or cultural amenities, or cash in lieu thereof, of benefit to the residents of the community authorized by the Town Board pursuant to Section 1.09 of this Zoning Ordinance.

ANIMAL, DOMESTIC - See "Household Pet."

ANIMAL, FARM - See "Livestock."

ANIMAL, WILD - An animal living in a state of nature and not ordinarily tame or domesticated.

ANTENNA - Any exterior transmitting or receiving device mounted on a tower, building or structure and used in communications that radiate or capture electromagnetic waves, microwaves, digital signals, analog signals, radio frequencies (excluding radar signals), wireless telecommunications signals or other communication signals.

ANTIQUÉ MOTOR VEHICLE - A motor vehicle manufactured more than twenty-five years prior to the current year, which has been maintained in or restored to a condition which is substantially in conformance with the manufacturer's specifications.

APICULTURE - Beekeeping of one or more hives or boxes occupied by bees.

ARCHERY RANGE - A building or premises where there are facilities for target practice with bows and arrows, whether open to the general public or by membership.

AREA, BUILDING - See "Building Area."

ART SCHOOL - An educational facility, usually for profit, where instruction in the arts is provided for children and/or adults. Such arts include, but are not limited to, dance, painting, sculpture, and vocal and instrumental music.

ARTS AND CRAFTS STUDIO - A commercial establishment in which handmade crafts and arts are produced and/or sold. An arts and crafts studio may house one or more occupations such as painting, sculpting, pottery, weaving and other fiber arts, glass-blowing, jewelry-making, woodworking, furniture making, candle-making, and similar arts and crafts.

AUXILIARY DWELLING UNIT - See "Dwelling Unit, Auxiliary."

AWNING - A roof-like cover, often of fabric, plastic, metal or glass designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure primarily over a window, walk, or the like. Any part of an awning which also projects over a door shall be counted as an awning.

BAKERY - A retail establishment primarily engaged in the sale of baked food products for consumption on-site and/or off-site. The products may be prepared either on or off-site.

BANK - See "Financial Institution."

BAR - A commercial establishment licensed by the State of New York whose primary activity is the sale of alcoholic beverages for consumption on the premises. Food and/or entertainment may also be provided.

BASE FLOOD - See "Flood, Base."

BED AND BREAKFAST ESTABLISHMENT - An owner occupied residential building containing a dwelling unit in which at least one, but not more than six, sleeping rooms are provided by the owner/occupant as overnight lodging facilities for the accommodation of transient guests for a fee, and where breakfast is provided to the guests only.

BILLBOARD - A type of off-premises sign that exceeds forty (40) square feet in sign area.

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

BOARD, PLANNING - The Planning Board of the Town of Allegany, Cattaraugus County, New York.

BOARD, TOWN - The Town Board of Allegany, County of Cattaraugus, New York, which is the Municipal Board of the Town of Allegany.

BOARDING HOUSE - A building in which three or more persons individually or as families are housed, lodged or boarded with or without meals, for compensation pursuant to previous

arrangement, but not open to public or overnight guests, by the resident owner-occupant of the dwelling.

BREAST HEIGHT - Measurement of the diameter of a tree at a height of four and one-half (4 1/2) feet from the ground.

BREW PUB - A restaurant that includes the brewing of beer on the premises, as an accessory use.

BUFFER YARD - An area of land forming a visual and/or physical separation or barrier between two uses. In the case of a visual barrier the land shall be covered with natural plantings or man-made material to provide a continuous physical screen preventing visual access and reducing noise.

BUILDABLE AREA - The space remaining on a lot after the minimum yard requirements of this Ordinance have been complied with.

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

BUILDING, ACCESSORY - A building located on the same lot as the principal building and which is clearly incidental to, and customarily found in connection with such principal building or use.

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 FACE - The exterior wall of a building, or that portion of the building wall occupied by an individual tenant, which is used for wall sign area calculation purposes. See Section 5.12.

BUILDING HEIGHT - See "Height."

BUILDING, PRINCIPAL - A building in which is conducted the primary use of the lot on which the building is located.

BUILDING SUPPLY STORE - A retail establishment that sells a diverse range of products and materials generally used in the maintenance, repair or construction of buildings and/or grounds, such as but not limited to hardware, lumber, tools, etc. A building supply store may also sell appliances, lighting fixtures, plumbing fixtures and similar products for buildings. A building supply store may also sell lawn and garden supplies.

BULK FUEL FACILITY - A commercial enterprise where flammable liquids, natural gas and/or propane that have a flash point at or below two hundred degrees Fahrenheit (closed cup tested) are 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, underground or in mobile tank cars or trucks. This definition does not include oil and gas production facilities. A "gas and alternative fuel station" shall not be construed to be "bulk fuel storage."

CALIPER - A measurement of the diameter of a tree.

CAMPGROUND - (1) An area of land or water, used for a range of overnight camping experiences, 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 temporary living accommodations, including accessory facilities which support the use, such as administration offices and laundry facilities, but not including the use of manufactured homes on a year round basis; or

(2) Any area that is occupied or intended or designed for occupancy by transients using recreational vehicles, motor homes or vacation trailers, for temporary, recreational overnight lodging; or

(3) Any land, including any building thereon, used for any assembly of persons for what are commonly known as "day camp" purposes, including recreation, arts and crafts, sports, and incidental food service. Types of camps include YMCA campgrounds and summer camp programs.

CANOPY - A roof-like cover, often of fabric, plastic, metal, or glass on a support, which provides shelter over a doorway and/or entry sidewalk.

CAR WASH - A building, premises or portions thereof where automobiles and other vehicles are washed either by the patron or others either by hand or using machinery and mechanical devices specifically designed for this purpose.

CEMETERY - A place used for interment of human remains or cremated remains, and/or pets, including a burial park for earth interments, a mausoleum for vault or crypt interments, or a combination thereof. "Cemetery" shall not include a crematorium.

CHILD DAY CARE CENTER - An establishment where care is provided for one or more children on a regular basis, for periods of less than 24 hours a day, in a place other than the child's own home. Day care facilities that are regulated by Section 390 of NYS Social Services Law are not included in this definition and are exempt from these regulations.

CHURCH - See "Place of Worship."

CINEPLEX THEATER - See "Theater, Cineplex."

CIVIC FACILITY - Buildings, structures and other uses owned and operated by the Town of Allegany, any other governmental agency, and/or fire district or fire company, which is regularly used for neighborhood meetings and/or other forms of public assembly.

CLASSIC MOTOR VEHICLE - A motor vehicle manufactured more than ten years prior to the current year and which because of discontinued production and/or limited availability is

considered to be a model or make of significant value to collectors or exhibitors and which has been maintained in or restored to a condition which is substantially in conformity with the manufacturer's specifications and appearance.

CLERK - The Town Clerk of the Town of Allegany, Cattaraugus County, New York.

CLUB - A private club maintained and operated for the exclusive use of members and guests. This definition does not include a fraternity or sorority house.

CLUSTER DEVELOPMENT - A subdivision of land in which the applicable zoning ordinance regulations are modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping, in order to preserve the natural and scenic qualities of open lands.

CODE ENFORCEMENT OFFICER (CEO) - The administrative officer appointed by the Town to enforce the provisions of this Zoning Ordinance.

COLLEGE - A post-secondary institution authorized by the state to award certificates, associate, baccalaureate, master and/or doctoral degrees.

COMMERCIAL RECREATION FACILITIES - Active and passive recreational facilities operated as a business and open to the public for a fee. Commercial recreation facilities include uses such as skiing facilities, snow tubing parks, tennis court, equestrian center, skating rink, bowling alleys, miniature golf courses, hiking trails, picnicking and similar facilities, and support facilities customarily associated with the particular type of commercial recreation. Activities may be conducted either indoor or outdoor.

COMMERCIAL STABLE - See "Stable, Commercial."

COMMERCIAL USE - A business use or activity, at a scale greater than a home occupation, involving the marketing of goods and services. Examples of commercial establishments include stores, office, and service retail uses such as copy shops and banks.

CONIFER - A type of evergreen tree that includes forms with true cones (such as pines) and others with an arillate fruit (such as yews).

CONSTRUCTION, START OF - Any work on a property, other than grading or clearing, that is preparatory to construction or placement thereon of a building or structure. Included as types of commencement are digging or excavation for basement or foundation, sewer or water system.

CONTIGUOUS PARCEL - A tract of land under the control of the same owner as adjacent parcels which are not divided from other adjacent parcels by any natural or man-made barriers such as existing streets and highways, public right-of-ways identified on the official map, or waterbodies.

CONTRACTOR'S YARD - An establishment of any general contractor or builder where equipment and materials are stored or where a contractor performs shop or assembly work. The contractor's office may also be located on site.

CONVENIENCE STORE - See "Mini-mart."

COPY SHOP - A retail facility for the custom reproduction of written or graphic materials on a custom order basis for individuals or businesses. Typical processes include, but are not limited to photocopying, blueprint, facsimile sending and receiving, laminating and offset printing.

CORNER LOT - See "Lot, Corner."

COUNTY - The County of Cattaraugus, New York State.

COVERAGE - See "Lot Coverage."

CRITICAL ROOT ZONE - A circular region measured outward from a tree trunk representing the essential area of the roots that must be maintained in order for the tree to survive. The minimum critical root zone is the entire area included in a tree's dripline. However, if circumstances warrant, the Planning Board may require a larger critical root zone to be protected during construction.

CROSS ACCESS - A driveway that interconnects the parking facilities of two or more abutting properties. Cross access driveways provide an opportunity for vehicles to move from one development to another without recourse to the roadway, thus reducing traffic volumes on the road and eliminating conflicts with entering or exiting vehicles.

CULTURAL FACILITY - Public libraries, museums, art galleries and other similar community institutions and quasi-public uses.

DECIDUOUS - A plant that loses its leaves at least once during the year.

DEPARTMENT STORE - A business that is conducted under a single owner's name, wherein a variety of unrelated merchandise is sold directly to the customer.

DEPENDENT MANUFACTURED HOME - See "Manufactured Home, Dependent."

DEVELOPMENT - Any man-made change to improved or unimproved property including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

DEVELOPMENT PLAN - A comprehensive plan for development of an entire area or site(s), which has been reviewed and approved by the Town Board as a distinct Planned Development (P-D) District, established by means of a zoning amendment under the requirements of New York State Town Law. See Section 4.11 of this Zoning Ordinance.

DRIPLINE - A vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground.

DRIVE IN THEATER - See “Theater, Drive In.”

DRIVE-THROUGH FACILITY - An accessory use to a commercial building, such as a bank, restaurant or pharmacy, in which a customer drives his/her motor vehicle up to an opening in the building, from which the customer transacts business without getting out of the vehicle.

DWELLING - A structure or portion thereof which is used exclusively for human habitation.

DWELLING, ATTACHED SINGLE FAMILY - Dwelling attached to one or more other one-family dwellings by common walls.

DWELLING, DETACHED - A dwelling which is not attached to any other dwelling unit.

DWELLING, MULTIPLE - A building or portion thereof containing three (3) or more dwelling units.

DWELLING, SEASONAL - See “Seasonal Dwelling.”

DWELLING, SINGLE-FAMILY - A building containing one dwelling unit.

DWELLING, SINGLE-FAMILY DETACHED - A dwelling which is designed for and occupied by not more than one household and which is surrounded by open space or yards and which is not attached to any other dwelling by any means.

DWELLING, TWO-FAMILY - A building containing two dwelling units.

DWELLING UNIT - One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single household. A dwelling unit is designed for permanent occupancy and shall not be construed to include a hotel, motel, boarding house or other such use of a transient nature.

DWELLING UNIT, AUXILIARY - A secondary dwelling unit established in conjunction with and clearly subordinate in size to a principal, detached single-family dwelling on an owner-occupied lot. The auxiliary dwelling unit may be located in the same structure as the principal dwelling or in a detached building that is located on the same lot as the principal dwelling. See Section 5.11.

ELECTRIC VEHICLE (EV) CHARGING STATION - A battery charging station or rapid charging station designed to recharge battery powered electric vehicles and plug-in hybrid electric vehicles. There are two types of Electric Vehicle Charging Stations, Private and Public:

- (a) **Private Electric vehicle charging station** - An electric vehicle charging station that is privately owned and has access restricted to the owner/tenant of the property, such as parking at a single-family home or multi-family dwelling.
- (b) **Public Electric vehicle charging station** - an electric vehicle charging station that is either publicly owned and publicly available (e.g., park and ride parking, public library parking lot) or privately owned but available to the public, such as shopping center parking lots.

ELECTRIC VEHICLE (EV) CHARGING STATION PARKING SPACE - A marked parking space that contains an Electric Vehicle Charging Station. The parking space may be restricted for the exclusive use of an electric vehicle.

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. For purposes of this Zoning Ordinance, Telecommunications Facilities and Telecommunications Towers, which are defined separately in this Ordinance, shall not be considered to be "essential services," but shall be governed by the separate regulations for "telecommunications facilities."

EVERGREEN - A plant that holds its leaves throughout the year.

FACTORY-BUILT HOUSING - A factory-built structure designed for long-term residential use. For the purposes of these regulations, factory-built housing consists of three types: manufactured homes, mobile homes, and modular homes.

FARM STAND - A commercial enterprise in which agricultural products, such as vegetables, flowers, and fruit, which are primarily grown on-site, are sold.

FARMWORKER HOUSING - A dwelling, located on a parcel in agricultural use, for the purpose of housing an employee of that farm operation, which may also provide housing for the employee's family. Farmworker housing is an accessory use to the principal use of a parcel or parcels for agriculture. Farmworker housing may include, but is not limited to, a mobile home or manufactured home.

FEED AND GRAIN STORAGE FACILITY - A commercial enterprise in which grain and other agricultural produce is stored and sold at wholesale and/or retail.

FENCE - An artificially constructed barrier of wood, masonry, stone, metal or any other material or combination of materials erected for the enclosure or screening of areas of land.

FINANCIAL INSTITUTION - The premises of a bank, credit union, savings and loan company, trust company, finance company, mortgage company, investment company or similar institution.

FINISHED GRADE - See "Grade, Finished."

FISH FARM - An area devoted to the cultivation of fish and/or other seafood for commercial sale.

FITNESS CENTER - See "Health Club."

FLAG LOT - See "Lot, Flag."

FLOOD OR FLOODING - A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland waters.
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD, BASE - The flood having a one percent (1%) chance of being equaled or exceeded in any given year.

FLOOD HAZARD AREA - Land in the flood plain within the municipality subject to a one percent (1%) or greater chance of flooding in any given year, known as the "100 year flood".

FLOODPLAIN - The low lands adjoining the channel of a river, stream or watercourse, lake or other body of standing water, which have been or may be inundated by flood water. The channel of a stream or watercourse is a part of the flood plain in accordance with the National Flood Insurance Program (NFIP) as administered by the Federal Emergency Management Agency (FEMA).

FLOODWAY - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height, in accordance with the National Flood Insurance Program (NFIP) as administered by the Federal Emergency Management Agency (FEMA). Also referred to as Regulatory Floodway.

FLOOR AREA - See "Gross Floor Area."

FORESTRY - The growing and/or harvesting of tree species for commercial purposes.

FUNERAL HOME - A building or part thereof used for human funeral services, including chapels, embalming, autopsies, storage of caskets, funeral urns and other related funeral supplies, and the storage of funeral vehicles, but does not include facilities for cremation.

GARAGE, PRIVATE - A building, accessory to dwellings, used for the parking or temporary storage of motor vehicles, boats and trailers, and incidental household belongings.

GAS AND ALTERNATIVE FUEL STATION - Any area of land, including structures thereon, that is used for the sale of gasoline or any other motor vehicle fuel, and oil and other

lubricating substances. Alternative fuels, such as bio-diesel, compressed natural gas (CNG), hydrogen, liquefied natural gas (LNG) and similar fuels may be sold.

GAS AND ALTERNATIVE FUEL STATIONS WITH MINI-MART - A gas and/or alternative fuel station with a retail convenience store as an accessory use.

GOLF COURSE - Any tract of land designated for playing the game of golf and for services related thereto.

GRADE, FINISHED - The final elevation of the ground level of a site after development. Finished grade shall be established at the ground adjacent to the building or structure. If the ground is not entirely level, finished grade shall be determined by averaging the elevation of the ground for each face of the building or structure.

GRADE, NATURAL - Elevation of the existing surface of the land prior to commencement of construction of any improvements proposed or previous site disturbance.

GREENHOUSE - (1) A commercial enterprise whose principal activity is the growing of plants within an enclosed building, including hydroponic farming. Some plant cultivation may occur outdoors. Plants may be stored on site and may be sold to wholesalers and/or to the general public. Outside storage and/or display areas of plants and gardening equipment is allowed as an accessory use. *And/or* (2) A commercial enterprise where plants are sold, regardless of whether or not they are grown on site.

GROSS FLOOR AREA - The sum of the floor area of all stories in a structure, measured from the exterior faces of exterior walls, or in the case of a common wall separating two buildings, from the centerline of such common wall.

GUN CLUB - A building or premises where there are facilities for the firing of handguns, rifles, or other firearms, whether open to the general public or by membership.

HEALTH CLUB - For profit or non-profit establishment which provides athletic, exercise, weight control and other similar health activities on a fee or membership basis.

HEIGHT - For a *building* and other enclosed structure the height is the vertical distance measured from the finished grade to:

- (a) the highest point of the roof for flat roofs
- (b) to the deck line of mansard roofs
- (c) to the mean height between eaves and ridge for gable, hip and gambrel roofs.

The height of a *tower* or other structure that does not have a roof is the vertical distance measured from the finished grade to the highest point on the tower or other structure, including the base pad and any antenna.

The height of a *wind energy conversion system (WECS)* shall be measured from natural grade to the top of the tip of the blade in the highest vertical position.

HISTORIC RESOURCES - Any historic building, structure, facility, site or prehistoric site that is listed on the State and/or National Registers of Historic Places. Any historic building, structure, facility, site or district or prehistoric site that has been proposed by the NY Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for a nomination for inclusion in the National Register of Historic places. Any locally significant historic resource designated pursuant to Article 5-K of the NYS General Municipal Law is also included.

HOME OCCUPATION - A profession, activity or land use that is undertaken for profit, regardless of whether or not a profit is made, at a scale less than a commercial use, within a dwelling unit or accessory structure on the same lot, that is carried out by the resident(s). A home occupation is an accessory use to the residential use of the property and shall be clearly incidental and secondary to the use of the property as a residence. See Section 5.10.

HOSPITAL - An institution, licensed by the State of New York, providing primary health services and medical or surgical care to persons, primarily inpatients.

HOTEL - An establishment open to the general public providing lodging accommodations designed for use by overnight transients or travelers or temporary guests, for compensation. A hotel may also be known as a "motel" or "inn."

HOUSEHOLD PET - Animals that are customarily kept for personal use, companionship or enjoyment within the home. Household pets may include, but are not limited to, dogs, cats, rabbits, domestic birds such as parakeets and parrots, guinea pigs, and domestic mice and rats.

INCENTIVES - Adjustments to the permissible population density, area, height, open space, use, or other provisions of this zoning ordinance for a specific purpose authorized by the Town Board pursuant to Section 1.09 of this Zoning Ordinance.

INCENTIVE ZONING - The system by which specific incentives are granted, pursuant to section 261-b of NYS Town Law, on condition that specific physical, social, or cultural benefits or amenities would inure to the community.

INDIVIDUAL SOLAR ENERGY SYSTEM - See "Solar Energy System, Individual."

INDUSTRIAL USE - A business use or activity that involves manufacturing, fabrication, assembly and/or warehousing.

INDOOR THEATER - See "Theater, Indoor."

INN - See "Hotel."

JUNK - One or more junk appliance(s), junk accessory vehicle, junk furniture, junk mobile home and/or junk manufactured home, and/or two or more junk motor vehicles.

JUNK ACCESSORY VEHICLE - Any abandoned or discarded truck camper, camping trailer, recreational vehicle, camper, travel trailers, pop-up trailer, tent trailer or overnight trailer.

JUNK APPLIANCE - Any inoperable and/or unused household appliance, including but not limited to, a stove, washing machine, dryer, dishwasher, freezer, refrigerator, air conditioner, water heater, or television, which is stored outside of any residence or structure.

JUNK FURNITURE - Abandoned, discarded, or irreparably damaged furniture including, but not limited to, sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs, and chests of drawers.

JUNK MANUFACTURED and/or MOBILE HOME - Any abandoned or discarded structure, or part thereof, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, if erected on a site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. To qualify as a junk manufactured or mobile home, the dwelling must meet two out of three of the following conditions for six months or more:

- (1) the electrical service is disconnected or terminated
- (2) it is not occupied as a dwelling unit.
- (3) it is no longer habitable for residential occupancy, as determined by the Town's Code Enforcement Officer.

JUNK MOTOR VEHICLE - Any motor vehicle or used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicle, which is:

- (1) unlicensed or unregistered; or
- (2) abandoned, wrecked, stored, discarded, dismantled, or partly dismantled; or
- (3) not in condition for legal use upon the public highways.

The fact that a motor vehicle does not display a current motor vehicle registration or license plate shall be presumptive evidence that such motor vehicle is not in condition for legal use upon the highways.

With respect to any motor vehicle not required to be registered or a motor vehicle not usually used on public highways, the fact that such motor vehicle is not in condition to move under its own power shall be presumptive evidence that such motor vehicle is a junk motor vehicle, unless refuted by verifiable and credible proof.

Exceptions: The following shall not be considered to be a junk motor vehicle:

- (1) Unregistered vehicles stored by or for the owner while the owner is:
 - (a) a full time student of the immediate family attending a school, college, or university; or
 - (b) a member of the US Armed Forces; or
 - (c) physically unable to operate a motor vehicle by reason of an injury or illness.
- (2) Farm machinery on a parcel used for an agricultural use, including forestry. Farm machinery kept for parts shall be kept in a location not visible from a public road.
- (3) Vehicle used for property maintenance on its own property, which does not travel on public roads.

- (4) Antique or classic motor vehicles.
- (5) An automobile dealer, who is licensed by New York State and who is conducting business in accordance with the regulations of the Town, is permitted to have unregistered vehicles for sale on the lot where the business is conducted. All vehicles shall be in condition for use on the public highways.
- (6) An automobile repair shop, which is licensed by New York State and which is conducting business in accordance with the regulations of the Town, may have disassembled vehicles awaiting repair.

JUNK STORAGE AREA - The area of any lot used or intended to be used for the placement, storage or deposit of junk.

JUNKYARD - The outdoor storage or deposit of any of the following, whether in connection with another business or not, for a period of more than 30 consecutive days in any six month period of time:

- (1) Two or more junk motor vehicles, or parts that in combination equal two or more vehicles; and/or
- (2) One or more junk manufactured or mobile homes; and/or
- (3) One or more junk appliance(s); and/or
- (4) One or more junk accessory vehicles; and/or
- (5) One or more items of junk furniture; and/or
- (6) Any combination of the above that totals two or more items.

KEEPING OF LIVESTOCK - See "Livestock, Keeping Of."

KENNEL - Any lot or premises on which four (4) or more domestic animals more than four (4) months of age, are bred, raised, and/or boarded, for compensation.

LAND USE ACTIVITY - Any construction or other activity which changes the appearance of land or a structure or the intensity of use of land or a structure. "Land use activity" shall explicitly include, but not be limited to, the following: new structures, expansions to existing structures, new uses, changes in or expansions to existing uses, roads, driveways and excavations for the purpose of extracting soil or mineral deposits.

LANDSCAPING - Any combination of living plants (such as grass, ground cover, shrubs, vines hedges, or trees) and nonliving landscape material (such as rocks, pebbles, mulch, walls, fences, or decorative paving materials). Landscaping may include the preservation and incorporation of existing trees and vegetation into site development.

LIGHT MANUFACTURING - See "Manufacturing, Light."

LIVESTOCK - Dairy and beef cattle, horses, sheep, goats, llamas, alpacas, bison, poultry, emus, rabbits, or any similar farm animal, but not including household pets or wild animals.

LIVESTOCK, KEEPING OF - The breeding, raising or grazing of livestock, including dairy farms, beef cattle, horses, poultry, rabbits and similar farm animals. Products derived from the

livestock, such as milk or wool, may be stored on-site, but no commercial manufacturing of the product is allowed (for example, no manufacture of ice cream or cheese).

LOADING AND UNLOADING SPACE, OFF-STREET - An open area of land other than a street or a public way, the principal use of which is for the standing, loading and unloading of motor vehicles, tractors and trailers to avoid undue interference with public streets and alleys.

LOCAL COMMERCIAL ESTABLISHMENT - A retail enterprise that provides goods for sale directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Such establishments may include, but are not limited to, stores such as antique and secondhand stores; apparel and accessory stores; book and stationary stores; office supplies; confectionery shops; florists; hardware stores; furniture and home furnishings; lighting, electrical and appliance stores; jewelry and gift shops; liquor stores; pharmacies; and sporting goods and bicycle stores.

LONG TERM CARE FACILITY - A for-profit or not-for-profit facility that provides bed care, inpatient services and related medical services on a 24-hour per day basis for two or more individuals requiring regular medical attention, but excluding facilities providing surgical or emergency medical services, and excluding facilities providing care for alcoholism or drug addiction.

LOT - A parcel of land, which is in one ownership, with frontage on, or legal access to, a public or private road.

LOT AREA - The net area contained within lot lines, measured on a horizontal plane.

LOT, CORNER - A parcel of land situated at the intersection of two or more streets. In the case of a corner lot, the Town of Allegany Code Enforcement Officer shall designate which street right-of-way line shall be considered as the front lot line; in making this determination the CEO shall take into consideration the building orientation to the street and the point of access to the lot.

LOT COVERAGE - The area and/or percentage of a lot occupied by the principal building(s) and accessory buildings. Lot coverage shall be calculated by dividing the building area by the lot area.

LOT DEPTH - The mean horizontal distance between the front and rear lot lines, measured approximately perpendicular to the front lot line.

LOT, FLAG - A lot that has access to a road by means of a narrow strip of land. A flag lot may also be referred to as a "panhandle" lot. A flag lot has the appearance of a flag and staff, or a frying pan, in which the staff or panhandle is used as the point of access.

LOT, INTERIOR - A lot other than a corner lot.

LOT LINE - Any boundary line of a lot. The front lot line shall be the right-of-way line of the street giving access to the lot.

LOT LINE, FRONT - The property line dividing a lot from the right-of-way of the road or street.

LOT LINE, REAR - The property line opposite the front lot line.

LOT LINE, SIDE - Any lot line other than a front or rear lot line.

LOT OF RECORD - Any lot lawfully in existence at the time of adoption of or amendment to this Zoning Ordinance.

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

LOT WIDTH - The distance between the side lot lines, measured at the front yard setback line.

MANUFACTURED HOME - A structure transportable in one or more sections which, in the traveling mode, is 8 body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet, and which is built on a permanent chassis and which is designed to be used as a single family dwelling with a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. A "manufactured home" is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 United States Code Sec. 5401) and is sometimes referred to as a "HUD Code home." A manufactured home must display a "HUD seal" (data plate). The term "Manufactured Home" does not include recreational vehicles, travel trailers or modular homes.

MANUFACTURED HOME, DEPENDENT - A manufactured home or mobile home allowed as a temporary, accessory use to a single family home, where the dependent manufactured home is occupied by a family member of the resident of the lot, who is dependent for care upon the family.

MANUFACTURED HOME PARK - A plot or parcel of land containing two (2) or more manufactured or mobile homes.

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

MANUFACTURING - The mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the creation of products, and the blending of materials.

MANUFACTURING, HEAVY - The manufacture, assembly, fabrication, packaging or other processing of products primarily from extracted or raw materials. Heavy manufacturing includes the following and similar uses:

- (1) Commercial laundries and dry cleaning plants, provided that all solvents used in the process and the vapors therefrom shall be non-explosive and nonflammable, and the entire cleaning and drying process shall be carried on within completely enclosed solvent-reclaiming units;
- (2) Manufacture of plastics, resins and abrasives;
- (3) Manufacture of heavy machinery;
- (4) Metal and metal ores reduction, refining, smelting, alloying, and casting and foundry products;
- (5) Automobile assembly and fabrication;
- (6) Processing or treatment of bituminous products;
- (7) Concrete products manufacture; concrete or cement mixing plants;
- (8) Other industrial processes such as blending, mixing, and packaging of disinfectants, insecticides, fungicides, ink, soap, detergents and related household and industrial chemical compounds

MANUFACTURING, LIGHT - The manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging of such projects, and incidental storage, sales and distribution of such products. Light manufacturing includes the following and similar uses:

- (1) Manufacture and assembly of mechanical and electronic devices, electrical appliances, the machining and assembly of parts made of metal, electrical and electromechanical devices and components;
- (2) Manufacture and/or assembly of precision tools and equipment, including tool, die, and pattern making; machine shops;
- (3) Manufacture and/or assembly of machines and machine parts, such as automobile parts, sewing machines, typewriters, calculators and office machines;
- (4) Treatment and processing of metal and metal products, including finishing, plating, grinding, sharpening, cleaning, rustproofing, and heat treatment;
- (5) Fabrication of metal products such as panels, sheets, tubes and rods, bicycles, metal foil, tin, aluminum, gold, metal furniture, musical instruments, and sheet metal products;
- (6) The manufacture and/or assembly of household and office items and furnishings; musical, scientific, medical, dental and photographic equipment and supplies; recreation equipment, amusement devices, novelties and toys of any type;
- (7) Fabrication of wood products such as boats, boxes, cabinets, woodworking, and furniture;
- (8) Fabrication of paper products such as bags, book bindings; boxes and packing materials, and office supplies;
- (9) Fabrication of clothing and other textile products;
- (10) Production of pharmaceutical and cosmetic products and toiletries;
- (11) Commercial food and associated industries such as bakeries, bottling of beverages, food processing, frozen foods, food sundry manufacturing, ice cream manufacturing and other food products.

MEDICAL CLINIC - A place where medical or dental care is furnished to persons on an out-patient basis by two (2) or more physicians, dentists, chiropractors, osteopaths, and/or occupational or physical therapists who have common offices in a building which may also offer laboratory and/or diagnostic facilities to patients on an out-patient basis. A medical clinic may include such uses as reception areas, offices, consultation rooms, x-ray facilities, minor operating rooms and/or a pharmacy. A medical clinic shall not provide overnight accommodation.

MICRO-BREWERY A small-scale production facility at which beer is produced and bottled and at which wholesale and retail storage and distribution may occur. The volume of production of such facility may not exceed 15,000 barrels or 465,000 gallons per year. The facility may have a tasting room for the consumption and sales of products produced on site.

MICRO-DISTILLERY A small-scale, craft alcohol production facility, which may include the production of distilled spirits, hard ciders, and/or wine. The volume of production of such a facility may not exceed 35,000 gallons per year. The facility may have a tasting room for the consumption and sales of products produced on site.

MINI-MART - A small retail establishment, usually associated with another use, that offers for sale a limited line of grocery and household items, cosmetics, convenience foods.

MINI-STORAGE FACILITY - Any building or group of buildings on a single parcel made of individual storage cells, which are rented or leased to and individual or business for storage of nonhazardous materials, personal property and equipment.

MINING - Extraction of gravel, sand, minerals, peat and/or topsoil for sale or use off site. The moving of topsoil, sand and/or gravel from one part of a property to another part of the same property in the same ownership shall not be construed to be mining. Site work incidental to another approved land use shall not be construed to be mining. Oil and/or natural gas extraction shall not be construed to be mining. Mining is further defined as Commercial Mining and Incidental Mining.

COMMERCIAL MINING - The extraction of more than 1000 tons or 750 cubic yards of minerals, whichever is less, in any consecutive 12 month period.

INCIDENTAL MINING - The extraction of less than 1000 tons or 750 cubic yards of minerals, whichever is less, in any consecutive 12 month period.

MIXED-USE BUILDING - A single building that includes a mixture of two or more of the following uses: residential, office, retail, recreation, light industrial and/or other miscellaneous uses. Each use in a Mixed-use Building shall be individually allowable as a permitted or special permitted use within the zoning district in which the building is located.

MOBILE HOME - A transportable, factory-built home, designed to be used as a year-round, single family dwelling, built prior to June 15, 1976, the effective date of the Federal Manufactured Housing Construction and Safety Standards Act of 1974. A mobile home does not

display a HUD seal (data plate). The term "Mobile Home" does not include recreational vehicles, travel trailers or modular homes.

MODULAR HOME - Factory-built housing that is certified as meeting the New York State Building Code. A modular home is constructed on-site from components that are substantially made and assembled in a factory and that are delivered to a building site, removed from their transport frame, and are assembled and installed on a permanent foundation on-site. A modular home is not built on a chassis, and it may also be known as a "factory manufactured home." A modular home is not a "manufactured home."

MORTUARY - See "Funeral Home."

MOTEL - See "Hotel."

MOTOR VEHICLE - All vehicles propelled or drawn by power other than muscular power, originally intended for use on public highways, including but not limited to automobiles, bus, truck, semi-tractor, motorcycle, and mini-bicycle. A motor vehicle shall also include vehicles such as all-terrain vehicles and snowmobiles, and watercraft, which are not intended for use on the public highways.

MOTOR VEHICLE SALES DEALER - Anyone who meets the standard in NYS Department of Motor Vehicles, *Part 78, Motor Vehicle Dealers & Transporters Regulations*, which is: "Any person who sells, or offers for sale more than five motor vehicles, motorcycles or trailers, other than mobile home trailers, in any calendar year or who displays or permits the display of three or more motor vehicles, motorcycles or trailers, other than mobile home trailers, for sale at any one time or within any one calendar month upon premises owned or controlled by him, if such vehicles were purchased, acquired or otherwise obtained by such person for the purpose of resale, will be regarded as a dealer." (*Section 78.1 Introduction*)

MULCH - Any nonliving organic material customarily used in landscape design to retard erosion and to retain moisture.

MUSEUM - An institution devoted to the procurement, care, study, and display of objects of lasting value or interest.

NATURAL GRADE - See "Grade, Natural."

NIT - A unit of illuminative brightness equal to one candela (12.5 lumens) per square meter, measured perpendicular to the rays of the source.

NOISE SENSITIVE PROPERTY - residences, hospitals, public libraries, schools, and places of worship in the Town of Allegany. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it is regularly used for one of the purposes listed herein in more than an incidental manner.

NONCONFORMING USE - See "Use, Nonconforming."

NON-PARTICIPATING PROPERTY OWNER - An entity which has not entered into any contractual arrangement with the applicant for a commercial Wind Energy Conversion System (WECS) facility covering land in the Town of Allegany.

NURSERY SCHOOL - An establishment operated for the purpose of providing both daytime care and instruction for two or more children from two to five years of age inclusive, and operated on a regular basis, including kindergartens, day nurseries, and day care centers.

NURSING HOME - See "Long Term Care Facility."

OFFICE, GENERAL BUSINESS - A non-retail, service-oriented office or agency such as realtors, insurance agents, computer programming, advertising agencies, photography studios, travel agencies and/or similar services.

OFFICE, PROFESSIONAL - A building or space used by persons such as accountants, architects, artists, dentists, designers, engineers, lawyers, physicians, physical therapists and similar professions, who by virtue of training and/or license, are qualified to perform services of a professional nature, and/or where storage of goods and sale of merchandise is minimal and secondary to performance of the service.

OPEN SPACE - Land in an essentially undeveloped state that is used for recreation, resource protection, habitat protection, nature preserves, view protection, buffer yards, and/or similar amenities.

OUTDOOR STORAGE - Storage other than in a completely enclosed building, such as a house, garage or barn.

PARK - A public or private area of land that is predominately open space, that is available to the general public, and that is principally used for active and passive recreation and/or for scenic purposes, and that is not used for a profit-making purpose. These areas may include, but shall not be limited to, walkways, benches, open space, playing fields, wading pools, and similar features. Also see "Commercial Recreation Facilities."

PARKING LOT, COMMERCIAL - Any tract of privately-owned land which is used for the storage of motor vehicles as the principal use of the lot and is not accessory to any other use on the same or any other lot, and contains parking space rented to the general public or reserved for a group of individuals by the hour, day, week, month or year.

PARKING LOT, PRIVATE - Land used for the storage of motor vehicles as an accessory use to the principal use of the site, which is located on the same lot as the principal use or on another lot. The parking spaces are reserved in some manner for the principal use and are not available to the general public.

PARKING LOT, PUBLIC - An off-street parking area where motor vehicles may be stored by the general public, with or without a fee, for temporary, daily or overnight parking.

PARKING, OFF-STREET - An area separated from a street with an appropriate means of vehicular access to the street, intended for the temporary storage of vehicles.

PARKING SPACE - Space available for the parking of one motor vehicle.

PARKING STRUCTURE, COMMERCIAL - Any structure in which motor vehicles may be parked or stored that is not accessory to another use on the same lot, and contains parking spaces rented to the general public or reserved for a group of individuals by the hour, day, week, month or year.

PARTICIPATING PROPERTY OWNER - an entity which has entered into a lease, easement, or other contractual arrangement with the applicant for a commercial Wind Energy Conversion System (WECS) facility covering land in the Town of Allegany.

PEEP SHOW - See "Adult Use."

PERSONAL SERVICE ESTABLISHMENT - A business establishment where professional services are provided for gain and where the retail sale of merchandise is accessory to the provision of such services, including but not limited to the following: barber shops and beauty shops; tailor shops; shoe repair shops; tanning salons; laundromats, both self-serve and drop off; and dry cleaning establishments.

PET GROOMING ESTABLISHMENT - A commercial enterprise where household pets are bathed, clipped, and/or combed, for a fee. No overnight boarding of the animals is permitted.

PETTING ZOO - See "Zoo, Petting."

PLACE OF WORSHIP - A structure owned or leased by a religious organization, which people regularly attend to participate in or hold religious services, meetings or other related religious activities. A social meeting hall and administrative offices may be located in the same building or in a separate building. A "place of worship" includes churches, synagogues, temples, and mosques.

PLANT CULTIVATION - The use of land for the growing of plants and crops in the open. Types of crops include, but are not necessarily limited to, field crops, fruit trees, vegetables, flowers, grapes, nursery stock, mushrooms, and tree farms. Minor processing of the crops to prepare them for market, such as sorting, cleaning, packing, storage, drying, and/or hulling, shall be considered to be "plant cultivation." Production of maple syrup and maple sugar shall be construed to be "plant cultivation."

POWER PLANT - An electrical power generation facility that, regardless of fuel or energy source, is operated by a public utility or independent power producer and whose primary function is the provision of electricity to the electrical distribution system or transmission grid. The plant may also incorporate a co-generation or combined heat and power (CHP) process. A Wind Energy Conversion System (WECS) shall not be considered to be a "power plant."

PREMISES - A lot together with all the buildings and uses thereon.

PRINCIPAL BUILDING - See "Building, Principal."

PRINCIPAL STRUCTURE - See "Structure, Principal."

PRINCIPAL USE - See "Use, Principal."

PRINT SHOP - A commercial establishment where large scale printing, imprinting, reproducing, and duplication of images occurs, using printing methods including but not limited to offset printing, lithography, and screen process printing. Publishing, binding and engraving may also be conducted.

PUBLIC USE - Government owned facilities to which the public has access, such as public parks, schools, administrative buildings, recreations, cultural and service buildings.

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

QUASI-PUBLIC USE - Churches, nursery schools and child care centers, parochial schools, colleges, libraries, museums, medical centers, hospitals and similar institutions of an educational, religious, charitable or philanthropic nature.

RAIL FREIGHT TERMINAL - A rail facility for freight pick-up or distribution.

RECREATION FACILITIES, COMMERCIAL - See "Commercial Recreation Facilities."

RECREATIONAL VEHICLE (RV) - A vehicle built on a single chassis and designed to be either self propelled or towed by another vehicle. A recreation vehicle is not designed or intended for use as a permanent dwelling, but as temporary living quarters for recreational camping, travel, or seasonal use. This definition includes vehicles such as trailers, campers, and travel trailers. A recreation vehicle is not a "manufactured home" or a "mobile home".

RECYCLING FACILITY - An establishment that accepts recyclable materials, whether by donation or purchase, from the public. Recyclable materials include materials such as newspapers, cardboard, glassware, beverage cans and bottles, and metal. The materials may be collected, flattened, crushed, bundled and/or stored, but no manufacturing of new products may occur. A recycling facility shall not be construed to be a junkyard.

RELIGIOUS INSTITUTION - A primarily residential land use in which the members of a religious order share communal living and dining facilities. A Religious Institution may also contain a Place of Worship. Convents and monasteries are considered to be Religious Institutions.

RESEARCH AND DEVELOPMENT FACILITY - Scientific or research laboratories devoted to research, design and/or experimentation, which may include processing and production operations incidental to research and development, but not including manufacture or sale of products.

RESIDENTIAL USE - A land use consisting of single-family, two-family or multiple dwellings, or other forms of housing for humans that is permitted in this Ordinance.

RESTAURANT - A commercial establishment where food and beverages are prepared, served and primarily consumed on the premises and where food sales constitute a minimum of 51 percent of the gross sales receipts. Takeout sales may be allowed, provided there is no drive-through window.

RESTAURANT, DRIVE-THROUGH - A building in which food is prepared and served for consumption on the premises and which includes a facility that allows food to be ordered and taken from the premises for consumption elsewhere, without leaving a vehicle.

RETAIL USE - A commercial use or activity primarily involving the sale of merchandise to the public.

RIGHT-OF-WAY - A strip of land not on a lot that is dedicated to public use for pedestrian and/or vehicular movement, and which may also accommodate public utility infrastructure (including but not limited to water lines, sanitary sewer lines, power lines and gas lines), curbs, lighting, and drainage facilities. In no case shall a right-of-way be construed to mean an easement. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and that is under the control of a public agency.

RIGHT-OF-WAY LINE - The dividing line separating a lot from a street. In any case where a future right-of-way has been established or approved by the Town, County or State, such future right-of-way line shall be considered as the right-of-way line for the purposes of determining lot area and setback requirements.

SAWMILL - A for-profit establishment where logs are sawn, split, shaved, stripped, planed, or chipped or otherwise processed. A sawmill may include the drying and/or storage of wood. A "sawmill" does not include the processing of timber for use on the same lot by the owner or resident of that lot.

SCENIC RESOURCE - Any road, highway, lane, district or corridor designated pursuant to Article 49 of the NYS Environmental Conservation Law. Any area designated a Scenic Area of Statewide Significance pursuant of the NYS Coastal Management Program is also included.

SCHOOL - A facility, either public or private, that provides a curriculum of elementary, secondary and/or academic instruction, including pre-kindergartens, kindergartens, elementary schools, middle schools, and/or high schools, but not including the home-schooling of children in their own home by their parents and/or guardians.

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

SETBACK - The required minimum distance by which any building or structure must be separated from a lot line or right-of-way line. Also see "yard, required."

SETBACK LINE, FRONT - The setback line that is parallel to the front lot line.

SETBACK LINE, REAR - The setback line that is parallel to the rear lot line.

SETBACK LINE, SIDE - The setback line that is parallel to the side lot lines.

SHADE TREE - A hardwood tree that reaches a minimum height of 15 feet at maturity and which provides relief from direct sunlight for at least six months of each year.

SHOPPING PLAZA - A group of retail and other commercial establishments that is planned, owned, and managed as a single property. On-site parking is provided.

SHRUB - A self-supporting woody perennial plant of low stature, characterized by multiple stems and branches growing from the base.

SIGN - Any words, lettering, symbols, figures, numerals, emblems, pictures, devices or representation in the nature of a visual communication, whether painted, posted, printed affixed or constructed, including all associated brackets, braces, supports, wires and structures, which is displayed for informational or communicative purposes. This definition shall not include holiday decorations; the noncommercial use of any flag, emblem, insignia or other display of any nation, political subdivision, or organization; traffic, safety or similar regulatory devices; scoreboards; vending machines; or customary displays of merchandise or objects and materials placed behind a store window.

SIGN, AGRICULTURAL - A sign used to identify rows of crops, types of cattle, the name of the farm, "farms of distinction" and similar identification signs.

SIGN, AWNING - A sign incorporated into or attached to an awning.

SIGN, CANOPY - A sign incorporated into or attached to a canopy.

SIGN, CHANGEABLE COPY - A sign or any portion thereof, on which letters and/or numbers are changed manually. The letters and numbers are static once they are changed. There are no animated or moving components. A "changeable copy sign" is not a "digital display sign."

SIGN, DIGITAL DISPLAY - A sign containing words, numbers, symbols, figures or images that can be electronically or mechanically changed by remote, automatic means. There are two types of Digital Display Signs: Electronic Graphic Display Signs and Video Display Signs.

SIGN, DIRECTIONAL - An on-premises sign that assists in the flow of pedestrian or vehicular traffic, such as “enter,” “exit,” “one-way,” “parking ahead” or similar directions.

SIGN, ELECTRONIC GRAPHIC DISPLAY - A sign or portion thereof that displays electronic, static images, static graphics, or static pictures, with or without text information, defined by a small number of matrix elements using different combinations of light emitting diodes (LED’s), fiber optics, light bulbs or other illumination devices within the display area, where the message change sequence is accomplished immediately or by means of fade, repixelization or dissolve modes. Electronic Graphic Display Signs include computer programmable, microprocessor controlled electronic displays.

SIGN, FLASHING - Any moving or animated sign or any illuminated sign on which artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any revolving illuminated sign shall be considered a “flashing sign”.

SIGN, FREESTANDING - Any sign permanently anchored to the ground, which stands alone on its own foundation and structural supports and which is independent from any supporting elements of any building or other structure. There are several types of freestanding signs: Ground Signs, Monument Signs, Pole Signs, and Pylon Signs.

SIGN, GROUND - A freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a total height not exceeding six (6) feet.

SIGN, ILLUMINATED - Any sign designed to give forth any artificial light, or designed to reflect light from any natural or artificial sources, or illuminated by an exterior light.

SIGN, MONUMENT - A freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a height exceeding six (6) feet.

SIGN, NAMEPLATE - An on-premises sign that indicates the name of the occupants and/or the address of the property, or both.

SIGN, OFF-PREMISES - A sign that announces a use conducted and/or goods or services available at a location other than on the lot on which the sign is located. There are two types of off-premises signs: billboards and outdoor advertising signs.

SIGN, ON-PREMISES - A sign that announces a use conducted and/or goods or services available on the lot on which the sign is located.

SIGN, OUTDOOR ADVERTISING - A type of off-premises sign that has forty (40) square feet or less in sign area.

SIGN, POLE - A freestanding sign which has a sign face elevated above ground level by two or more supporting poles and with the area below the sign face open to the ground.

SIGN, PORTABLE - A sign designated or intended to be moved easily that is not permanently embedded in the ground or affixed to a building or other structure, including but not limited to the following signs: trailer signs (with or without wheels) menu and sandwich boards, sidewalk or curb signs, and A-frame signs.

SIGN, PROJECTING - A sign, normally double faced, which is affixed to a wall of any structure or building, and any part of which projects by more than twelve (12) inches from such wall. A projecting sign may be either perpendicular or parallel to the building to which it is affixed.

SIGN, PYLON - A freestanding sign which has a sign face elevated above ground level by one supporting pole and with the area below the sign face open to the ground.

SIGN, REAL ESTATE - A sign that advertises the sale or rental of the property on which the sign is located.

SIGN, TIME AND TEMPERATURE - A portion of a sign that displays only the current date, time and temperature in an electronic or digital manner.

SIGN, VIDEO DISPLAY - A sign that changes its message or background in a manner or method of display characterized by motion or pictorial imagery, which may or may not include text, and depicts action or a special effect to imitate movement, the presentation of pictorials or graphics displayed in a progression of frames which give the illusion of motion, including but not limited to the illusion of moving objects, moving patterns or bands of light, or expanding or contracting shapes.

SIGN, WALL - A sign fastened to, or painted on, the wall of a building in such a manner that the wall becomes the supporting structure for, or forms that background surface of, the sign, and which does not project more than twelve (12) inches from such building.

SIGN, WINDOW - A sign, whether or not lighted, which is applied or attached to a window in such a manner that it can be seen from a public sidewalk, passageway, road, street or highway.

SIGN AREA - The entire face of a sign, including the surface and any framing, trim, or molding, but not including the supporting structure. Where there is no geometric frame or edge of the sign, the area shall be defined by a projected, enclosed, four-sided geometric shape which most closely parallels the outline of said sign. Also see "sign face."

SIGN FACE - The area or display surface of a sign that is used for the message. "Sign face" does not include the structural supports of the sign. A double sided sign has two sign faces.

SITE PLAN - A drawing or sketch that shows the arrangement, layout and design of the proposed use of a single parcel of land.

SOLAR ENERGY SYSTEM, INDIVIDUAL - A system which converts solar energy to usable thermal, mechanical, or electrical energy to meet all or a part of a building's energy requirements, including heating, cooling, hot water and/or electricity. A solar energy system is an accessory use to the principal use of the lot on which it is located and serves only the uses on that lot. A solar energy system shall provide no more electricity than is needed for the principal use and/or accessory use of the lot on which the solar energy system is located and shall not be used for the generation of energy for sale to others; however, the solar energy system may be connected to the local utility via a net-metering system. Such systems may be roof mounted on a principal or accessory structure or may be free-standing, but shall adhere to all required dimensional regulations, including height, setbacks, and coverage.

SPA - A commercial establishment which employs professional, licensed therapists whose services include massage and body or facial treatments. Treatments may include body packs and wraps, exfoliation, cellulite and heat treatments, body toning, waxing, aromatherapy, cleansing facials, and electrolysis. Hydrotherapy and steam and sauna facilities, nutrition and weight management, spa cuisine and exercise facilities and instruction may be provided. A spa does not include overnight sleeping facilities. See also "health club."

STABLE, COMMERCIAL - A commercial establishment where horses are available for riding to the general public and/or in which more than three horses not owned by the property owner are boarded for a fee. A commercial stable may provide lessons in riding, jumping and/or the handling, training, and care of horses.

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

STREET CLASSIFICATION - The classification of each street, highway, road and right-of-way is based upon its location and its present and estimated future traffic volume and its relative importance and function. Streets are classified according to the following types of street capacities:

- (a) Local Street - Provides for direct access to abutting land and for local traffic movements. Local streets are the internal part of the Town's street system to provide movement within residential areas or to other land use areas. Low volume, low speed.
- (b) Collector Street - Provides for traffic movement between major arterials and local streets, and provides direct access to abutting property.
- (c) Arterial Street - Provides for the through traffic movement between areas and across the Town with direct access to collector streets and local streets. Arterial streets are subject to necessary measures to control entrances, exits and curb use and other devices to allow through traffic while protecting low volume, low speed streets from danger or congestion caused by high volume, high speed traffic.

- (d) Expressway - A divided arterial highway for through traffic to which access from the abutting properties is prohibited and all street crossings are made by grade-separated intersections or overpasses. High volume, high speed.

STREET, PRIVATE - A street that serves or is designed to serve more than one principal use or lot and which remains in the ownership of and is maintained by the developer or development association and is not dedicated to the Town.

STRUCTURE - Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. The term "structure" includes "building."

STRUCTURE, ACCESSORY - A structure located on the same lot as the principal building and which is (1) clearly incidental to, and customarily found in connection with such principal building or use and (2) is operated and maintained for the benefit or convenience of the owners, occupants, employees, customers or visitors to the principal use.

STRUCTURE, PRINCIPAL - A structure in which is conducted the principal use of the lot on which it is located.

STUB STREET - a nonpermanent dead-end street intended to be extended in conjunction with the subdivision and/or development of adjacent land.

SUPERMARKET - A retail establishment primarily selling food, as well as other convenience and household goods, which occupies more than 25,000 square feet of gross floor area.

TAVERN - See "Bar."

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

TELECOMMUNICATIONS FACILITY - Towers and/or antennas and accessory structures together used in connection with the provision of cellular telephone service, personal communications services, paging services, radio and television broadcast services, and similar broadcast services.

TELECOMMUNICATIONS TOWER - Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, alternative tower structures, and the like. The term includes the structure and any support thereto.

THEATER, CINEPLEX - A facility with multiple movie theaters, each one of which is capable of providing performances independent of the others in the complex. The facility has a common box office, lobby, concession stand, and restroom facilities.

THEATER, DRIVE IN - An open lot and appurtenant facilities, devoted primarily to showing motion pictures and similar video entertainment to patrons seated in vehicles. A drive in theater may have a small concession stand as an accessory use.

THEATER, INDOOR - A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical and/or other performing arts.

TOPSOIL - A surface layer of the soil containing more or less organic matter to a depth usually plowed in cultivation. The "A" horizon of the soil column.

TOWN - The Town of Allegany.

TOWN HOUSE - A dwelling unit attached to other dwelling units by not more than two (2) common walls extending from the foundation to the roof. (Also see "Dwelling, attached single family").

TRADE SCHOOL - An educational facility, usually for profit, which provides instruction of industrial, clerical, managerial and/or secretarial skills, and similar vocational instruction.

TREE - A self supporting woody plant normally growing to a mature height of at least 15 feet.

TRUCKING TERMINAL - A building or part of a building or premises for the storage and/or transfer of goods, wares and merchandise for the owner or others by truck transport.

TRUCK STOP - A commercial service facility for over-the-road trucks and vehicles, which customarily provides services such as, but not limited to, fuel, restaurant facilities, shopping, shower facilities and parking facilities for prolonged periods for the drivers of said vehicles.

UNIVERSITY - See "College."

USE - The specific purpose for which land or a building is designed, arranged, or intended, or for which it is or may be occupied or maintained, let or leased.

USE, ACCESSORY - A use customarily incidental and subordinate to the main use or building and located on the same lot therewith. In no case shall such use dominate, in area, extent or purpose the principal lawful use of building.

USE, NONCONFORMING - The use of a building, structure or land, which does not conform to the current land use regulations for the zoning district in which it is located, but which use was in conformity with prior regulations at the time of its establishment, or which was in existence prior to the establishment of use regulations for the zoning district in which it is situated.

USE, PERMITTED - A use of land which is allowable as-of-right, without first having to obtain a Special Use Permit.

USE, PRINCIPAL - The primary use of any lot.

USE, PUBLIC - See "Public Use."

USE, QUASI-PUBLIC - See "Quasi-public use."

USE, SPECIAL - Any use of land or buildings or both that require special approval from the Planning Board. See Article VIII of this Zoning Ordinance.

USE, TEMPORARY - An activity conducted for a specified, limited period of time.

VARIANCE, AREA - The authorization by the Zoning Board of Appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

VARIANCE, USE - The authorization by the Zoning Board of Appeals for the use of land for a purpose which is otherwise not allowed or is prohibited by the applicable zoning regulations.

VEHICLE BODY SHOP - A building used for the repairing and/or painting of the exterior and/or undercarriage of motor vehicle bodies, in conjunction with which there may be towing service and motor vehicle rentals for customers while the motor vehicle is under repair.

VEHICLE SALES ESTABLISHMENT - An establishment, including open areas and/or enclosed showrooms, for the display and sale of new or used automobiles, trucks, trailers, motorcycles, boats, farm implements, construction equipment, and/or recreational vehicles.

VEHICLE SERVICE AND REPAIR FACILITY - An establishment where inspection of, repairs to, and servicing, greasing, and adjusting of, automobiles, trucks, and other vehicles may be performed. The sale of motor vehicle fuels and lubricants may be conducted as an accessory use. Towing of disabled vehicles may also be conducted. All storage of accessories and repairing and servicing shall be conducted within a wholly enclosed building or buildings.

VETERINARY OFFICE - An establishment for the care and treatment of animals, where animals may be boarded during their convalescence or as needed for medical treatment. This definition does not include a "Kennel."

WAREHOUSE - A building or premises, for storing of goods, wares and merchandise, whether for the owner or for others, whether publicly or privately owned or used.

WHOLESALE ESTABLISHMENT - A business establishment engaged in selling to retailers or jobbers rather than directly to consumers.

WIND ENERGY CONVERSION SYSTEM (WECS) - Any mechanism designed for the purpose of converting wind energy into electrical energy. A WECS may include one or more wind turbines, towers, associated control or conversion electronics, transformers, and/or other maintenance or control facilities or other component used in the system. A WECS may be either a Commercial Wind Energy Conversion System or a Non-Commercial Wind Energy Conversion System.

- (a) **COMMERCIAL WIND ENERGY CONVERSION SYSTEM** - A wind energy conversion system that is intended solely to generate electrical power for sale to the power grid.
- (b) **NON-COMMERCIAL WIND ENERGY SYSTEM** - A wind energy conversion system that is incidental and subordinate to another use on the same parcel and that supplies electrical power solely for on-site use, except that when a parcel on which a noncommercial WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by the noncommercial WECS and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use, as long as no net revenue is produced by such excess electrical power.

YARD - An unoccupied space, open to the sky, on the same lot with a building or structure.

YARD, FRONT - A required space between the front line of the principal building and the front lot line, extending across the full width of the lot.

YARD, REAR - A required space between the rear line of the building and the rear lot line, extending across the full width of the lot.

YARD, REQUIRED - The minimum yard required between a lot line and building line or line of any parking, loading and stacking area, which is open and unoccupied from the ground upward, except for walks and landscaping.

YARD, SIDE - A required space between the side line of the building and the side lot line, and extending from the front yard to the rear yard. The width of a side yard shall be measured at right angles to its side lot lines.

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

ZOO, PETTING - A collection of tame farm or domestic animals, but not including wild animals, which is so arranged for public display that human visitors have an opportunity to approach and pet them under supervised conditions.

ARTICLE III ESTABLISHMENT OF DISTRICTS AND ZONING MAP

Section 3.01 Establishment of Zoning Districts

In order to carry out the intent, purpose, and provisions of this Zoning Ordinance the Town of Allegany hereby establishes the following districts:

- R-1 Single-family Residential District
- A-F Agricultural-Forestry District
- C-1 Local Commercial District
- C-2 Highway Commercial District
- I-1 Light Industrial District
- I-2 Heavy Industrial District
- C-F Community Facilities District
- P-D Planned Development District
- F-O Floodplain Overlay District
- CO-1 Route 417 East Corridor Overlay District
- CO-2 Route 417 West Corridor Overlay District
- WE Wind Energy Overlay District

Section 3.02 Zoning Map

- (A) The locations and boundaries of the aforesaid zoning districts are hereby established on a scaled map, entitled "Town of Allegany Zoning Map." This map is hereby made a part of this Zoning Ordinance and shall have the same force and effect as if the Zoning Map together with all notations, references and other information shown thereon, were fully set forth and described herein. The Zoning Map shall show its effective date and the date of each subsequent amendment to the Map.
- (B) The Town Clerk shall be the custodian of the official Zoning Map of the Town of Allegany. The Town Clerk shall cause any amendment to the Zoning Map, which has been adopted by the Town Board, to be recorded on the official Zoning Map by appropriate revision and notation.

Section 3.03 District Boundaries

- (A) The district boundary lines shown on the Zoning Map are, unless such boundary lines are fixed by dimensions shown on the Zoning Map, intended to follow either lot or easement lines, or be parallel or perpendicular thereto, or to follow the center lines of alleys, streets, highway and railroad rights-of-way, and waterways.
- (B) Boundaries indicated as approximately following said existing lines shall be construed as following such lines, or as approximately parallel to said lines shall be construed as being

parallel to said lines. Boundaries indicated as approximately following Town boundaries shall be construed as following such boundaries.

- (C) Where the center line 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 such center line.
- (D) The Code Enforcement Officer shall review the Zoning Map upon request of any person and make a determination of the district boundary. The Code Enforcement Officer shall provide a copy of his determination, in writing, to the Town Clerk, who shall keep the determination with the official Zoning Map. Any person aggrieved by any decision of the Code Enforcement Officer may appeal such decision to the Zoning Board of Appeals. If the Code Enforcement Officer is unable to make a decision of the boundaries on the Zoning Map, he shall refer the matter to the Zoning Board of Appeals for interpretation.
- (E) Where physical or cultural features existing on the ground are at variance with those shown on the Zoning Map, or in other circumstance not covered above, the Zoning Board of Appeals shall interpret the district boundaries. The Zoning Board of Appeals shall provide a written determination of its interpretation to the Town Clerk, who shall keep the determination with the official Zoning Map.

Section 3.04 Lots Located in More Than One Zoning District

If a lot is located in more than one zoning district, the regulations for the applicable zoning district shall govern that portion of the lot. In the event that the lot cannot conform to all regulations for each zoning district, the regulations for the district in which the greater part of the lot lies shall govern the entire lot.

Section 3.05 More than one Principal Use per Lot

- (A) **Detached Single-family Dwellings.** In all districts where detached single-family dwellings are permitted, a lot may be developed for one single family home and any customary accessory use(s) that are permitted in this Ordinance, provided that there shall be no more than one detached single-family dwelling on a lot. The detached single-family dwelling shall be considered as the principal use of that lot, and no other principal use shall be permitted on the same lot.
- (B) If two or more detached single-family dwellings are proposed to be located on the same lot, the lot shall be subdivided and each new lot shall meet all the requirements of this Ordinance, the Town's Land Division Regulations and other applicable Town regulations.
- (C) Other than a detached single-family dwelling, more than one structure containing a principal permitted or special permitted use may be allowed on a single lot, provided that the yard and other requirements of this Ordinance shall be met for each structure, as if they were located on individual lots.

- (D) Other than a detached single-family dwelling, where otherwise allowed in this Ordinance, a principal building may contain more than one allowable use, such as offices and retail uses, or dwelling units above retail or other commercial uses. (See definition of "Mixed-Use Building" in Article II.)

ARTICLE IV DISTRICT REGULATIONS

Section 4.01 District Use Regulations

The requirements, land uses and limitations set forth in this Article in the tables entitled, respectively, "District Use Regulations, Schedule A", and "Dimensional Regulations, Schedule B" with all explanatory material thereon, are hereby made a part of this Zoning Ordinance and shall apply in the respective zoning districts as indicated herein.

Section 4.02 Permitted Uses and Special Permitted Uses

- (A) The permitted and special permitted land uses for each zoning district established in Article III of this Ordinance are set forth in the table entitled "Section 4.02: District Use Regulations - Schedule A."
- (B) In any case in which uncertainty arises as to whether or not a particular land use is allowed pursuant to Schedule A, the Code Enforcement Officer shall request the Zoning Board of Appeals to render its determination with respect thereto. In making its determination the Zoning Board of Appeals shall use the criteria listed in Section 7.06 of this ordinance. **Uses that are not listed or not interpreted by the Zoning Board of Appeals to be included in Schedule A shall not be permitted except by amendment to this Ordinance.**

Section 4.02: District Use Regulations - Schedule A

| <i>Residential Land Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|---|------------|------------|------------|------------|------------|------------|------------|
| Auxiliary Dwelling Unit [See Section 5.11] | SP | SP | SP | NP | NP | NP | NP |
| Bed and Breakfast establishments | SP | SP | SP | NP | NP | NP | NP |
| Boarding Houses | SP | SP | SP | NP | NP | NP | NP |
| Dwellings over first floor commercial uses | NP | SP | P | P | SP | SP | P |
| Farmworker Housing | NP | SP | NP | NP | NP | NP | NP |
| Manufactured Home Parks [See Section 5.09 (C)] | NP | SP | SP | NP | SP | SP | NP |
| Manufactured or Mobile Homes on individual lots [See Section 5.09(B)] | P | P | P | NP | NP | NP | NP |
| Multiple dwellings | NP | SP | SP | SP | SP | SP | P |
| Seasonal Dwellings | NP | P | NP | NP | NP | NP | NP |
| Single-family dwellings, detached | P | P | P | NP | NP | NP | NP |
| Townhouses and attached single-family dwellings | SP | SP | SP | SP | SP | SP | P |
| Two-family dwellings | NP | P | P | NP | NP | NP | NP |

| <i>Agricultural Land Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|---|------------|------------|------------|------------|------------|------------|------------|
| Apiculture (beekeeping) | SP | P | SP | NP | SP | SP | SP |
| Farm stands | P | P | P | P | P | P | NP |
| Feed and grain storage facilities | NP | P | P | P | P | P | NP |
| Forestry | P | P | P | P | P | P | P |
| Greenhouses, including hydroponic farming | SP | P | P | P | P | P | P |
| Keeping of Livestock | SP | P | SP | NP | SP | SP | SP |
| Kennels | NP | SP | SP | SP | SP | SP | NP |
| Plant cultivation | SP | P | P | SP | P | P | NP |
| Stable, commercial | SP | P | SP | NP | SP | SP | SP |
| Wood processing for mulch, firewood, pallets and similar products | NP | P | NP | NP | P | P | NP |

Also See Section 4.14(E)(10) for a list of Prohibited Uses in the underlying Agricultural-Forestry District in the Route 417 West Corridor Overlay District.

Section 4.02: District Use Regulations - Schedule A , Continued

| <i>Public and Quasi-Public Land Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|---|------------|------------|------------|------------|------------|------------|------------|
| Adult day care centers | SP | SP | SP | SP | SP | SP | SP |
| Churches and other Places of Worship | P | P | P | P | P | P | P |
| Clubs | SP | SP | SP | SP | SP | SP | SP |
| Colleges and Universities | NP | SP | SP | SP | SP | SP | P |
| Essential Services, but not including administrative or office buildings | P | P | P | P | P | P | P |
| Hospitals | NP | SP | P | SP | P | P | NP |
| Museums | NP | SP | P | SP | P | P | P |
| Nursery schools and child day care centers | SP | SP | SP | SP | SP | SP | SP |
| Parochial and private K-12 schools | SP | SP | SP | SP | SP | SP | SP |
| Public Uses, such as parks, libraries, public schools, administrative and service buildings for governmental purposes, and similar uses | P | P | P | P | P | P | P |
| Religious institutions such as convents, monasteries and similar residential/religious communities | P | P | P | P | P | P | P |

| <i>Miscellaneous Land Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|--|------------|------------|------------|------------|------------|------------|------------|
| Adult Uses | NP | SP | NP | NP | NP | NP | NP |
| Airports, private | NP | SP | NP | NP | NP | NP | NP |
| Billboards * | NP | SP | NP | NP | NP | NP | NP |
| Cemeteries | NP | SP | NP | NP | NP | NP | P |
| Outdoor Advertising Signs * | NP | SP | SP | NP | NP | NP | NP |
| Petting Zoo | NP | SP | NP | NP | NP | NP | NP |
| Telecommunication facilities | SP | SP | SP | SP | SP | SP | SP |
| Wind Energy Conversion System (WECS), Commercial | NP | SP | NP | NP | NP | NP | NP |
| Wind Energy Conversion System (WECS), Non-commercial | NP | SP | NP | NP | NP | NP | NP |

* Billboards and Outdoor Advertising Signs are not permitted in the Route 417 East Corridor Overlay District (CO-1) or in the Route 417 West Corridor Overlay District (CO-2). See Section 4.13(E)(10) and Section 4.14(E)(11).

Section 4.02: District Use Regulations - Schedule A , Continued

| <i>Retail, Service, Commercial and Commercial Recreational Land Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|--|----------------|------------|------------|------------|------------|------------|------------|
| Art School | SP | SP | P | P | P | P | P |
| Arts and Crafts Studio | NP | SP | P | P | P | P | P |
| Bakeries | NP | SP | P | P | P | P | NP |
| Banks and financial institutions with drive-through facilities | NP | SP | SP | SP | SP | SP | SP |
| Banks and financial institutions without drive-through facilities | NP | SP | P | P | P | P | P |
| Bars and Taverns | NP | SP | SP | SP | SP | SP | SP |
| Brew Pub | NP | SP | SP | SP | SP | SP | NP |
| Building Supply Store | NP | SP | P | P | P | P | NP |
| Campgrounds | NP | SP | SP | NP | SP | NP | NP |
| Car Wash | NP | SP | SP | SP | SP | SP | NP |
| Commercial Recreation facilities | NP | SP | SP | SP | SP | SP | P |
| Copy Shop | NP | SP | P | P | P | P | P |
| Department stores | NP | NP | SP | SP | SP | SP | NP |
| Funeral Homes | NP | SP | SP | SP | SP | SP | NP |
| Gas and alternative fuel stations | NP | SP | SP | SP | SP | SP | NP |
| Gas and alternative fuel stations with mini-marts | NP | SP | SP | SP | SP | SP | NP |
| Golf courses | SP | SP | SP | SP | SP | SP | P |
| Gun Club, Archery Range | NP | SP | NP | NP | SP | NP | NP |
| Health clubs and fitness centers, Spas | NP | SP | P | P | SP | SP | P |
| Hotels, motels and inns | NP | SP | SP | SP | SP | SP | NP |
| Local commercial establishments, as defined in Article II | NP | SP | P | P | P | SP | SP |
| Long term care facility, nursing home | SP | SP | P | SP | SP | SP | NP |
| Medical clinics | NP | SP | P | P | P | P | P |
| Mini-Mart (convenience store), without gasoline sales | NP | SP | P | P | P | P | P |
| Mixed-Use Building | See Article II | | | | | | |
| Offices, Professional and General Business, and similar office use. | SP | SP | P | P | P | P | P |
| Parking lot, commercial | NP | NP | SP | SP | SP | SP | NP |
| Parking structure, commercial | NP | NP | SP | SP | SP | SP | NP |
| Personal Service establishments | NP | SP | P | P | P | P | P |
| Pet Grooming Establishment | NP | P | P | P | P | P | P |
| Print shop | NP | SP | P | P | P | P | P |

Section 4.02: District Use Regulations - Schedule A , Continued

| <i>Retail, Service, Commercial and Commercial Recreational Land Uses (Continued)</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|--|------------|------------|------------|------------|------------|------------|------------|
| Restaurant | NP | SP | P | P | SP | SP | P |
| Restaurant, drive-through | NP | SP | SP | SP | SP | SP | SP |
| Shopping plazas | NP | NP | SP | SP | SP | SP | NP |
| Supermarkets | NP | NP | SP | SP | SP | SP | NP |
| Theater, Cineplex | NP | SP | SP | P | NP | NP | P |
| Theaters, Drive in | NP | SP | NP | NP | SP | SP | NP |
| Theaters, Indoor | NP | SP | SP | P | NP | NP | P |
| Trade school | NP | SP | P | P | P | P | P |
| Truck Stops | NP | NP | SP | NP | SP | NP | NP |
| Vehicle body shops | NP | SP | SP | SP | SP | SP | NP |
| Vehicle sales establishment | NP | SP | SP | SP | P | SP | NP |
| Vehicle service and repair facilities, but not including body shops | NP | SP | SP | SP | P | SP | NP |
| Veterinary offices | NP | P | SP | SP | SP | NP | NP |

| <i>Industrial Land Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|--|------------|------------|------------|------------|------------|------------|------------|
| Bulk fuel facility | NP | NP | NP | NP | SP | SP | NP |
| Contractor's yards | NP | SP | SP | SP | P | P | SP |
| Junk yards | NP | SP | NP | NP | SP | SP | NP |
| Manufacturing, light, as defined in Article II | NP | SP | SP | SP | SP | SP | NP |
| Manufacturing, heavy, as defined in Article II | NP | NP | NP | NP | SP | SP | NP |
| Micro-Brewery | NP | SP | SP | SP | SP | SP | NP |
| Micro-Distillery | NP | SP | SP | SP | SP | SP | NP |
| Mini-storage facilities | NP | SP | SP | SP | P | P | SP |
| Mining | NP | SP | NP | NP | NP | NP | NP |
| Power Plant | NP | SP | NP | NP | NP | SP | NP |
| Recycling facility | NP | SP | NP | NP | SP | SP | NP |
| Research and development facility | NP | SP | SP | SP | SP | SP | P |
| Sawmills | NP | SP | NP | NP | SP | SP | NP |
| Trucking terminals, rail freight terminals | NP | SP | SP | SP | SP | SP | NP |
| Warehouses | NP | SP | SP | SP | SP | SP | NP |
| Wholesale establishments | NP | NP | SP | SP | SP | SP | NP |

Section 4.02: District Use Regulations - Schedule A , Continued

| <i>Accessory Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|---|------------|------------|------------|------------|------------|------------|------------|
| Day care facilities for children of employees | SP | P | P | P | P | P | P |
| Drive through facilities for commercial land uses not otherwise listed on Schedule A | NP | SP | SP | SP | SP | SP | SP |
| Private Electric Vehicle Charging Stations | P | P | P | P | P | P | P |
| Public Electric Vehicle Charging Stations | SP | P | P | P | P | P | P |
| Employee lunchrooms and break areas | SP | P | P | P | P | P | P |
| Home occupations, Major [see Section 5.10(D)] | SP | SP | SP | NP | NP | NP | NP |
| Home occupations, Minor [see Section 5.10(C)] | P | P | P | P | P | P | NP |
| Individual Solar Energy Systems | P | P | P | P | P | P | P |
| Off-street parking and/or loading and stacking spaces that are customarily incidental to commercial, office, retail, service, and/or industrial uses [See Section 5.13] | SP | P | P | P | P | P | P |
| Residential quarters for custodians, staff, caretakers or security personnel | NP | NP | SP | SP | SP | SP | P |
| Rooming and boarding of not more than two (2) persons by the owner-occupant of a dwelling | P | P | P | NP | NP | NP | NP |
| Storage of commercial vehicles used in conjunction with a permitted principal business use | SP | P | P | P | P | P | P |
| Storage of goods and processing operations that are clearly incidental to the principal permitted retail, service commercial or commercial use | SP | P | P | P | P | P | P |

Section 4.02: District Use Regulations - Schedule A , Continued

| <i>Temporary Structures and Uses</i> | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|---|-------------------------|------------|------------|------------|------------|------------|------------|
| Construction Trailers [See Section 5.02(A)] | P | P | P | P | P | P | P |
| Dependent Manufactured Home [See Section 5.09 (E)] | SP | SP | NP | NP | NP | NP | NP |
| Recreational Vehicle used for temporary habitation | See Section 5.09 (D)(1) | | | | | | |
| Temporary building/trailer for living purposes, during period that construction work is in progress for a permanent single-family residence on the same site. [See Section 5.02(B)] | SP | SP | SP | NP | NP | NP | NP |
| Temporary Motor Vehicle Sales [See Section 5.02(C)] | NP | NP | SP | SP | SP | SP | NP |

KEY:

Zoning Districts

- R-1 Single family Residential Zoning District
- A-F Agricultural-Forestry Zoning District
- C-1 Local Commercial Zoning District
- C-2 Highway Commercial Zoning District
- I-1 Light Industrial Zoning District
- I-2 Heavy Industrial Zoning District
- C-F Community Facilities Zoning District

Uses

- P Permitted as of right
- SP Permitted if a Special Use Permit is issued by the Planning Board (See Article VIII)
- NP Not Permitted

Also See Section 4.14(E)(10) for a list of Prohibited Uses in the underlying Agricultural-Forestry District in the Route 417 West Corridor Overlay District.

Section 4.03 Dimensional Regulations

The coverage, yard, height and area requirements for each zoning district established in Article III of this Ordinance are set forth in the table entitled "Section 4.03: Dimensional Regulations - Schedule B." Exceptions and additional dimensional regulations are contained in Sections 5.05, Height Regulations; 5.06, Setbacks and Required Yards; 5.07, Minimum Lot Area and 5.08, Minimum Gross Floor Area. For parcels in a Corridor Overlay District, see Sections 4.13(E)(4) and 4.14(E)(4), for additional requirements on minimum lot width in the underlying C-1 Zoning District.

Section 4.03: Dimensional Regulations - Schedule B *

| | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
|-------------------------------------|------------|------------|---|--|------------|------------|------------|
| Minimum Lot Area | 1 acre | 1 acre | Commercial: 10,000 sq.ft. Residential: 20,000 sq.ft. | 1 acre | 1 acre | 1 acre | 1 acre |
| Minimum Lot Width | 100 ft. | 100 ft. | 50 ft. | 200 ft. | 150 ft. | 150 ft. | 100 ft. |
| Minimum Front Yard Setback | | | | | | | |
| Principal Buildings | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. |
| Accessory Buildings | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. |
| Minimum Side Yard Setbacks | | | | | | | |
| Principal Buildings | 15 ft. | 15 ft. | 20 ft. total for combined side yards | 20 ft. total for combined side yards | 25 ft. | 25 ft. | 15 ft. |
| Accessory Buildings & Structures | 10 ft. | 10 ft. | Same as principal use | Same as principal use | 25 ft. | 25 ft. | 15 ft. |
| Minimum Rear Yard Setback | | | | | | | |
| Principal Buildings | 35 ft. | 35 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 35 ft. |
| Accessory Buildings & Structures | 10 ft. | 10 ft. | 40 ft. | 40 ft. | 40 ft. | 40 ft. | 35 ft. |
| Maximum Lot Coverage | 25% | 25% | 50% | 50% | 50% | 50% | 50% |
| Maximum Building Height | 35 ft. | 45 ft. | 45 ft. | 45 ft. | 45 ft. | 45 ft. | 60 ft. |

* Also See Article V, Sections 5.05, Height Regulations; 5.06, Setbacks and Required Yards; 5.07, Minimum Lot Area and 5.08, Minimum Gross Floor Area. For parcels in a Corridor Overlay District, also see Sections 4.13(E)(4) and 4.14(E)(4), for additional requirements on minimum lot width.

Key to Zoning Districts:

- R-1 Single family Residential Zoning District
- A-F Agricultural-Forestry Zoning District
- C-1 Local Commercial Zoning District
- C-2 Highway Commercial Zoning District
- I-1 Light Industrial Zoning District
- I-2 Heavy Industrial Zoning District
- C-F Community Facilities Zoning District

Section 4.04 Single-Family Residential District (R-1)

- (A) **Purpose.** The purpose of the R-1 District is to provide areas within the Town for primarily single-family detached residential development and land uses that are compatible with such development. The R-1 District provides for a range of densities, with smaller lot sizes being appropriate for areas that are served by municipal water and sewer service.
- (B) **Permitted and Special Permitted Principal Uses.** The permitted and Special Permitted uses in the R-1 Zoning District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.
- (C) **Dimensional Regulations.**
- (1) Dimensional Regulations for the R-1 District are presented in Section 4.03, Schedule B of this Article and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.
 - (2) Each detached, single-family dwelling in an R-1 District must be located on an individual lot of at least one acre, unless said lot is served by public sewer and/or water systems. If either a public sewer system or public water system serves a lot, the minimum lot size may be reduced by 25%. If both a public sewer system and a public water system serves a site, the minimum lot size may be reduced by 50%. Also see Section 5.07(B).
- (D) **Permitted Accessory Uses.** The following accessory uses are permitted in an R-1 District:
- (1) Detached private garages and off-street parking areas.
 - (2) Private gardens.
 - (3) Private swimming pools.
 - (4) Other private recreational uses and structures.
 - (5) Satellite dishes.
 - (6) Signs as may be permitted in Section 5.12 of this Ordinance.
 - (7) Other accessory uses and structures customarily incidental to single-family residential use of the property.
 - (8) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the R-1 Zoning District.

Section 4.05 Agricultural-Forestry District (A-F)

- (A) **Purpose.** The Agricultural-Forestry District is intended to promote the preservation of farmland and woodlands. The purpose of the A-F District is to provide areas within the Town for agricultural and forestry land uses and supporting services. Another purpose of the district is to provide locations for single-family residential dwelling units with a lot size appropriate to areas not served by municipal water supply or sanitary sewer disposal systems.
- (B) **Permitted and Special Permitted Principal Uses.** The permitted and Special Permitted principal uses in the A-F District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.
- (C) **Dimensional Regulations.** Dimensional Regulations for the A-F District are presented in Section 4.03, Schedule B of this Article and in and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.
- (D) **Permitted Accessory Uses.** The following accessory uses are permitted in an A-F District:
- (1) Accessory uses and structures customarily incidental to permitted principal uses in the R-1 District. [See Section 4.04(D)].
 - (2) Barns, silos, similar farm buildings or structures.
 - (3) Signs as may be permitted in Section 5.12 of this Ordinance.
 - (4) Accessory uses and structures customarily incidental to the permitted principal and Special Permitted uses allowed in the A-F District.
 - (5) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the A-F Zoning District.

Section 4.06 Local Commercial District (C-1)

- (A) **Purpose.** The purpose of the C-1 Local Commercial District is to provide areas within the town for day-to-day convenience shopping and personal service needs of a neighborhood area, in such a manner which protects local businesses and residences that are located along local streets from encroachments by larger scale, higher density commercial uses.
- (B) **Permitted and Special Permitted Principal Uses.** The permitted and Special Permitted principal uses in the C-1 District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.

(C) Dimensional Regulations. Dimensional Regulations for the C-1 District are presented in Section 4.03, Schedule B of this Article and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.

(D) Permitted Accessory Uses. The following accessory uses are permitted in a C-1 District:

- (1) Accessory uses and structures customarily incidental to permitted principal uses in the R-1 District. [See Section 4.04(D)].
- (2) Signs as may be permitted in Section 5.12 of this Ordinance.
- (3) Accessory uses and structures that are customarily incidental to the principal permitted and special permitted uses allowed in the C-1 District.
- (4) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the C-1 District.

Section 4.07 Highway Commercial District (C-2)

(A) Purpose. The purpose of the Highway Commercial C-2 District is to provide an area within the Town for automobile-oriented, large-scale commercial development, which will serve regional and community wide needs for general goods and services. This district is designed to accommodate large traffic generators such as shopping plazas and commercial drive-through facilities, and to accommodate the need for efficient, centralized facilities and parking. High intensity commercial use is appropriate in the eastern commercial area of the Town along Route 417, and this district is designed to accommodate these commercial uses while protecting surrounding local, residential neighborhood uses from encroachment and traffic congestion. Residential uses in the C-2 District are restricted to (1) that necessary to house maintenance and security personnel for the high intensity commercial developments, as accessory uses only, (2) to second floor areas above commercial uses, and (3) townhouses and multiple dwellings.

(B) Permitted and Special Permitted Principal Uses. The permitted and Special Permitted principal uses in the C-2 District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.

(C) Dimensional Regulations. Dimensional Regulations for the C-2 District are presented in Section 4.03, Schedule B of this Article and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.

(D) Permitted Accessory Uses. The following accessory uses are permitted in the C-2 District:

- (1) Accessory uses and structures customarily incidental to permitted principal and Special Permitted uses allowed in the C-2 District.

- (2) Signs as may be permitted in Section 5.12 of this Ordinance.
- (3) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the C-2 District.

Section 4.08 Light Industrial District (I-1)

(A) Purpose.

- (1) The purpose of the I-1 District is to provide suitable areas within the Town for light manufacturing and production activities, research and development activities, and related offices and accessory uses on sufficient land area to permit efficient development. The District is designed to promote the development of a balanced employment mix and diversified tax base within the Town. Each I-1 District shall be located in such a way that light industrial uses will neither encroach upon or otherwise damage surrounding uses nor will surrounding uses interfere with the efficient development and operation of said uses.
- (2) **Applicability.** The I-1 Light Industrial District is located as shown on the Zoning Map. The northern boundary of the I-1 District located in the Route 417 West corridor is the 1460 foot topographic contour. This topographic feature was chosen as the boundary for this Zone in order to include land that is reasonably flat and therefore most suitable for light industrial development. Due to scale, the boundary shown on the Zoning Map is somewhat approximate. Property owners may provide a topographic survey of their property, prepared by a surveyor licensed in the State of New York, showing the exact location of the 1640 foot contour on their property, in order to precisely determine the boundary of the zoning district. The survey will be reviewed by the Zoning Board of Appeals, who will make the final determination of the zoning district boundary.

(B) Permitted and Special Permitted Principal Uses.

- (1) The permitted and Special Permitted principal uses in the I-1 District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.
- (2) **Performance Standards.** Any light manufacturing use listed as a permitted or special permitted use in the I-1 District shall comply with the following standards:
 - (a) The majority of the industrial activity shall be conducted within an enclosed building. Any activities that are required to be conducted out of doors shall be screened from view from adjacent properties and roadways by fencing, landscaping or other appropriate measures.

- (b) The use is limited to the manufacture, compounding and/or assembly of products from previously prepared materials.
- (c) All activities shall be conducted in such a manner as to prevent hazard or annoyance to the community to the maximum extent feasible.
- (d) All activities shall comply with the performance standards set forth in Section 5.15 of this Ordinance.

(C) Dimensional Regulations. Dimensional Regulations for the I-1 District are presented in Section 4.03, Schedule B of this Article and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.

(D) Permitted Accessory Uses. The following accessory uses are permitted in an I-1 District:

- (1) Accessory uses and structures customarily incidental to permitted and special permitted principal uses allowed in the I-1 District.
- (2) Retail sale of products manufactured, compounded or assembled or stored on the premises.
- (3) Storage buildings that are necessary to store any vehicle, equipment or materials on the premises.
- (4) Signs as may be permitted in Section 5.12 of this Ordinance.
- (5) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the I-1 District.

Section 4.09 Heavy Industrial District (I-2)

(A) Purpose. The purpose of the I-2 District is to provide limited areas within the Town for the location of heavier manufacturing and processing facilities, as well as office, research and service establishments, and accessory uses on sufficient land area to permit efficient development. The I-2 District is designed to promote the development of a balanced employment mix and diversified tax base within the Town. Each I-2 District shall be located in such a way that industrial uses will neither encroach upon or otherwise damage surrounding uses nor will surrounding uses interfere with the efficient development and operation of these activities.

(B) Permitted and Special Permitted Principal Uses.

- (1) The permitted and Special Permitted principal uses in the I-2 District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.

(2) **Performance Standards.** Any manufacturing use listed as a permitted or special permitted use in the I-2 District shall comply with the following standards:

(a) All activities shall be conducted in such a manner as to prevent hazard or annoyance to the community to the maximum extent feasible.

(b) All activities shall comply with the performance standards set forth in Section 5.15 of this Ordinance.

(C) **Dimensional Regulations.** Dimensional Regulations for the I-2 District are presented in Section 4.03, Schedule B of this Article and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.

(D) **Permitted Accessory Uses.** The following accessory uses are permitted in an I-2 District:

(1) Accessory uses and structures customarily incidental to permitted principal uses allowed in the I-1 and I-2 Districts.

(2) Retail sale of products manufactured, compounded, assembled or stored on the premises.

(3) Storage buildings that are necessary to store any vehicle, equipment or materials on the premises.

(4) Signs as may be permitted in Section 5.12 of this Ordinance.

(5) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the I-2 District.

Section 4.10 Community Facilities District (C-F)

(A) **Purpose.** The purpose of the Community Facilities (C-F) District is to provide an area for colleges and universities and related educational, residential, and recreational activities. An additional purpose of this zoning district is to provide areas for recreational and civic land uses.

(B) **Permitted and Special Permitted Principal Uses.** The permitted and Special Permitted principal uses in the C-F District are listed in Section 4.02, Schedule A of this Article. Special Permitted Uses require the issuance of a Special Use Permit in accordance with Article VIII of these regulations.

(C) **Dimensional Regulations.** Dimensional Regulations for the C-F District are presented in Section 4.03, Schedule B of this Article and in Sections 5.05, 5.06, 5.07 and 5.08 of this Ordinance.

(D) Permitted Accessory Uses. The following accessory uses are permitted in a C-F District:

- (1) Accessory uses that are customary and incidental to higher educational land uses, and that are located on the same lot as the principal building(s).
- (2) Signs as may be permitted in Section 5.12 of this Ordinance.
- (3) Other accessory uses listed in Schedule A as either permitted or special permitted uses within the C-F District.

Section 4.11 Planned Development District (P-D)

(A) Purpose. Pursuant to Section 261-c of New York State Town Law, the Planned Development District is intended to provide for residential, commercial, industrial or other land uses, or a mix thereof, in which economies of scale, creative architectural or planning concepts and/or open space preservation may be achieved in furtherance of the Town's Comprehensive Plan and Zoning Ordinance.

The Planned Development District provides a means by which an area covered by a single development plan may be developed in a flexible manner in order to:

- (1) Encourage innovation in land use variety and design, in the layout and type of new structures and in their integration with existing structures
- (2) Enhance efficiency in the use of land, natural resources, energy, community services and utilities
- (3) Encourage open space preservation, and protection of natural resources, protection of historic sites and historic structures
- (4) Provide for flexibility in the location of structures in order to utilize topography and site features to best advantage
- (5) Provide for the reduction of the cost of infrastructure
- (6) Provide for the integration of a variety of compatible land uses
- (7) Allow flexibility of minimum lot sizes and dimensional regulations
- (8) Allow flexibility in the arrangement and types of land uses

(B) Authority

- (1) The Town Board of the Town of Allegany is hereby authorized to approve, approve with conditions, or disapprove the establishment of Planned Development (P-D) Districts. Simultaneously with the establishment of a P-D District, the Town Board shall approve, with or without conditions, a Development Plan for the P-D District.
- (2) When approved by the Town Board, each P-D District shall be a new zoning district that replaces the zoning district that previously applied to that area. The approved Development Plan shall contain all applicable land use and dimensional regulations that apply within that particular P-D District. The P-D District shall be shown on the Town's zoning map.

- (3) After the establishment of a P-D District and the adoption of a Development Plan, the Town of Allegany Planning Board is hereby authorized to conduct Site Plan review, following the procedures in Article IX of this Zoning Ordinance, for each phase of the development within the P-D District. When approving a site plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed development.

(C) Standards for Planned Development Districts

- (1) A Planned Development District may be located in any Zoning District.
- (2) A Planned Development District shall be a minimum of five (5) acres in size.
- (3) A Planned Development District may include any type of land use or a mix of land uses.
- (4) A Development Plan shall be provided for the entire area encompassed by the proposed Planned Development District, even if the area is intended to be developed in phases over time.
- (5) The Development Plan will establish a coherent, well-thought out plan for development of the entire area. The Development Plan will:
 - (a) Provide for a unified site design that minimizes alteration to prominent natural features and that minimizes impacts on the neighborhood, for example, from noise and traffic.
 - (b) Provide for a consistent architectural style.
 - (c) Provide for an interior circulation system that includes all modes of transportation, including pedestrian access and bicycling, in addition to motor vehicles; that is adequate to provide for emergency vehicle access; and that is adequate for the anticipated volume of traffic.
 - (d) Provide for a circulation system that ties into the existing system to promote connectivity for vehicles and pedestrians.
 - (e) Provide adequate water supply, sanitary sewage disposal, and stormwater disposal systems.
 - (f) Establish the types of permitted land uses, the density of those uses, maximum coverage, maximum building height, and minimum setback/yard requirements, and other dimensional regulations.
 - (g) The Development Plan shall reflect the same general level of detail as is contained in the text of Article IV for other zoning districts.

(D) Application Process for Planned Development (P-D) Districts

- (1) Application for the establishment of a P-D District shall be made to the Town Board. The application shall include the following:

- (a) Location Map, showing the location of the proposed P-D District in relationship to abutting properties and to the existing street network. This map shall also show existing on-site and off-site conditions, such as roads, structures, and any other improvements, in addition to significant on-site natural features (wetlands, floodplains, topography, etc.)
 - (b) A map of the proposed P-D District, showing the boundaries of the area to be rezoned to a P-D District, including property lines of all parcels to be included in the District.
 - (c) Name of the proposed P-D District.
 - (d) List of all property owners of parcels to be included in the P-D District. If the property owner(s) is not the applicant, a letter from each property owner, giving permission for the applicant to make the application, shall be provided.
 - (e) Development Plan, which will include the following:
 - i. Conceptual Site Layout Plan, showing the general site layout, building locations, setbacks from the boundary of the site, setbacks between buildings within the development, parking areas, internal vehicular and pedestrian circulation systems, and vehicular and pedestrian connections to the public street system.
 - ii. Conceptual Utilities Plan, showing how water supply and sanitary sewer disposal systems will be provided
 - iii. Conceptual Stormwater Management Plan (drainage plan)
 - iv. Project Narrative, discussing the type(s) of land uses planned for the site, proposed height and bulk of buildings, and minimum yard requirements.
 - v. General size of the land uses, either gross floor area or number of units, if residential, and the maximum coverage proposed for the District
 - vi. Conceptual design standards or performance standards that may be proposed for the development, if any
 - vii. Plans for buffering abutting property from possible impacts of the proposed development, if any
 - viii. Phasing Plan, if development of the project is intended to be completed in phases.
 - (f) Any other information the Town Board deems is needed for a complete understanding of the proposal. At its discretion, the Town Board may waive the requirement for submittal of one or more of the above listed items.
 - (g) All maps and drawings shall be to scale, readable, and shall contain a north arrow.
 - (h) Part 1 of the Environmental Assessment Form
 - (i) Application Fee, if any
- (2) The Town Board shall refer the application to the Town Planning Board for its review and recommendation. The Planning Board shall provide its recommendation within 45 days of the date of the Town Board's referral, unless a longer time period is established by the Town Board.

- (3) The Town Board shall refer the application to the Cattaraugus County Planning Board for its review and recommendation, pursuant to Section 239-m of General Municipal Law, as an amendment to the Zoning Ordinance map and text.
- (4) Within 62 days of receipt of a complete application, the Town Board shall hold a public hearing on the P-D District and Development Plan. Notice of the public hearing shall be provided by the following means:
 - (a) Providing the notice for amendments to the Zoning Ordinance that are contained in Article XI, Amendments, of this Zoning Ordinance, and
 - (b) By mailing a notice of the public hearing to the owners of every parcel that is within five hundred (500) feet of the perimeter of the area that would be included in the P-D District, at least ten (10) days prior to the public hearing, and
 - (c) by mailing a notice of the public hearing to the owners of every parcel that is proposed to be included in the P-D District, at least ten (10) days prior to the public hearing.
- (5) Within 62 days after the close of the public hearing, the Town Board shall make a decision on the application for Planned Development District. The Town Board may approve, approve with conditions, or disapprove the establishment of the Planned Development District. At the same time the Town Board shall approve, approve with conditions, or disapprove the Development Plan for the District. The time period within which the Town Board shall reach its decision may be extended by mutual consent of the applicant and the Board.

The Town Board's decision shall be based on the following Findings:

- (a) The proposed P-D District is consistent with the intent and purpose of this Zoning Ordinance.
 - (b) The proposed P-D District is consistent with the intent and purpose of the Town's Comprehensive Plan.
 - (c) The proposed P-D District will not have a significant adverse impact on the neighborhood in which it is located and is compatible with the existing character of the neighborhood in which it is located.
 - (d) The proposed P-D district complies with the standards of Section 4.11(C).
- (6) The Town Board shall notify the applicant, the Code Enforcement Officer and the Planning Board in writing of its determination within five (5) business days of the date of the action.
 - (7) The Town Clerk shall note, or cause to be noted, the location of the P-D District boundaries on the Zoning Map. The Development Plan shall be incorporated into the Zoning Ordinance text as an appendix.

(E) Amendment to P-D District and/or Development Plan. A P-D District is a zoning district established under the provisions of this zoning ordinance. The approved Development Plan, which regulates the permitted land uses, density, setbacks and other features, is also adopted as part of the zoning ordinance. Therefore, any changes to the

types of permitted land uses, or increases in the density, or reduction in the setback and yard requirements, or similar changes that exceed the standards established in the Development Plan, will require an amendment to the zoning ordinance, following the procedures in Article XI of this ordinance.

(F) Application Process for Site Plan Review in P-D Districts

- (1) After the Town Board creates a P-D District and approves the Development Plan for that district, the applicant shall submit a Site Plan application to the Planning Board. The site plan application may encompass the entire P-D District or a portion of that district. However, Planning Board approval of a site plan shall be required for each phase of development. Building and zoning permits shall not be issued for structures or land uses within a P-D District until site plan approval has been granted by the Town Planning Board for the area encompassed by such structures and land uses.
- (2) The application for Site Plan shall include all items listed in Section 9.04 of this Zoning Ordinance, unless the Planning Board waives the requirement for one or more application items.

The project design for the Site Plan application is intended to be more detailed than that shown on the Conceptual Site Layout Plan and other information provided as part of the Development Plan. In addition, building elevations, landscaping plan, lighting plan, signage plan, and similar site details, which may not be required by the Town Board as part of the Development Plan, will be required as part of the Site Plan application.

- (3) The Planning Board will review the application following the procedure in Section 9.06 of this Zoning Ordinance.
- (4) **Decision:** In making its decision regarding whether to approve, approve with conditions, or deny the Site Plan, the Planning Board shall find that the site plan is substantially consistent with the Development Plan approved by the Town Board. In making its determination of whether the site plan is "substantially consistent," some flexibility in the layout and arrangement of site features may be allowed, provided that the Site Plan adheres to the intent and spirit of the Development Plan and does not violate standards established by the Town Board. The Planning Board shall also determine that the site plan complies with the criteria in Article IX of this Ordinance.
- (5) If a project in a P-D District also requires Subdivision approval to create new lots, the applicant may apply for both Site Plan and Subdivision approval at the same time, and the Planning Board will consider the subdivision application concurrently with the Site Plan application, to the maximum extent feasible given the differing statutory review processes.
- (6) **Expiration:** The Site Plan approval shall expire two (2) years from the date of that approval, if construction of the approved development has not commenced.

Extensions of the site plan approval may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the approval shall expire two years from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.

Section 4.12 Floodplain Overlay District (F-O)

- (A) Purpose.** The purpose of the Floodplain Overlay District is to protect the health, safety and welfare of the residents of the Town of Allegany and to minimize public and private losses from hazards due to periodic or intermittent flooding. These purposes shall include the protection of persons and property, the preservation of water quality and the minimizing of expenditures for relief, insurance and flood control projects.
- (B) Applicability.** The F-O District shall apply to all Special Flood Hazard Areas, including Floodways, and Floodway Fringe areas, which are established by the Federal Emergency Management Agency (FEMA) for the Town of Allegany. The areas of Special Flood Hazard are identified in the Flood Boundary and Floodway Maps Community-Panel Number 360061 0001 B through Community-Panel Number 360061 0015 B, with an effective date of November 15, 1978, as may be revised from time to time.
- (C) Permitted Uses.** Permitted uses, special permitted uses and accessory uses shall be those designated in the underlying zoning district. Such uses also shall be subject to the additional regulations applicable under the requirements of Town of Allegany Local Law No. 1-1987 entitled "A Local Law for Flood Damage Prevention." (Adopted 06-11-87).
- (D) Dimensional Regulations.** All permitted uses, special permitted uses and permitted accessory uses shall conform to the dimensional regulations for the underlying zoning district. Such uses also shall be subject to the additional regulations applicable under the requirements of Town of Allegany Local Law No. 1-1987 entitled "A Local Law for Flood Damage Prevention." (Adopted 06-11-87).

Section 4.13 Route 417 East Corridor Overlay District (CO-1)

(A) Purpose. The purpose of the Route 417 East Corridor Overlay (CO-1) District is to foster and encourage commercial and other types of development, while at the same time promoting safety for pedestrian, vehicular, and commercial traffic. It is also the purpose of the zoning district to promote development that has consistency of architectural character and site design and positive visual aesthetics, and to protect residential neighborhoods from the traffic, congestion and other potential impacts that may result from adjacent commercial development through the use of landscaping, buffering, and screening.

(B) Applicability

- (1) This corridor overlay district shall apply to all areas shown on the Town of Allegany Zoning Map as being within the Route 417 East Corridor Overlay (CO-1) District.
- (2) All new development; redevelopment; land use activities; and changes in use, regardless of whether or not construction activities are involved, within the CO-1 District shall be subject to site plan review, following the procedures in Article IX of this Zoning Ordinance, except the following:
 - (a) Construction of one- or two-family dwelling units and ordinary accessory structures, and related land use activities.
 - (b) Landscaping
 - (c) Ordinary repair or maintenance to existing structures, in cases where the use remains the same
 - (d) Interior renovations or structural alterations within an existing building or structure, in cases where the use remains the same.
 - (e) Exterior alterations or additions to existing structures that would not increase the square footage of the existing structure by more than 25 %, in cases where the use remains the same.
 - (f) Agricultural use, as defined in Article II of this Ordinance.
 - (g) The sale of agricultural produce and temporary structures related to the sale of agricultural produce.
- (3) Notwithstanding the foregoing sub-section, any exterior alterations to commercial and/or industrial buildings that will significantly change the architectural appearance of those structures, regardless of whether there will be an increase in building size, shall require Site Plan review and approval prior to the issuance of a Building and Zoning Permit.
- (4) When considering an application for site plan review, the Planning Board shall use the criteria delineated in Article IX, as well as the development standards contained in Section 4.13(E), below. Where standards may conflict, the Planning Board shall use the more restrictive standard.

(C) Permitted and Special Permitted Principal Uses and Accessory Uses. Except as modified herein, the permitted, Special permitted, and accessory land uses allowed in the CO-1 District shall be the same as those in the underlying zoning district.

(D) Dimensional Regulations. Except as modified herein, the dimensional regulations of the CO-1 District shall be the same as those provisions of the underlying zoning districts.

(E) Development Standards

(1) General Criteria

- (a) The proposed development shall be in harmony with the goals and objectives established in the Town's Planning and Development Policies.
- (b) The proposed development shall be compatible with the general purposes and intent of this Zoning Ordinance.
- (c) The proposed development shall concur with the intent of the Route 417 Corridor Management Plan.
- (d) The proposed development shall have an overall clarity and coherence of design.

(2) Architectural Design

- (a) New buildings shall relate to the surrounding environment with regard to texture, scale, massing, proportion, and color. A strong visual relationship between the building, the site, and adjacent development is vital for overall design compatibility. Emphasis shall be placed on creating an interesting visual impression. The use of different textures, complementary colors, shadow lines, detailing, and contrasting shapes to create an appealing facade is strongly encouraged. The use of single colors and/or blank walls is discouraged.
- (b) Buildings shall be constructed to achieve a human scale and interest. Clusters of smaller buildings of varied size and orientation, instead of vast single buildings, are encouraged.
- (c) Consistent setbacks for buildings along the Route 417 frontage are encouraged. Primary buildings should be located close to the Route 417 frontage in order to create a more human-scaled, attractive environment.
- (d) Franchise-style architecture (also known as prototypical or corporate architecture) shall not be allowed, unless it is shown or modified to be in conformance with the objectives of this section of the Zoning Ordinance and with the intent of the Route 417 Corridor Management Plan.
- (e) Development shall conform to the following criteria:
 - i. Buildings shall not overpower the surrounding buildings, uses and landscape.

- ii. Care shall be given to the character of all sides of the building, not just the "front" facade.
 - iii. Long, uninterrupted blank walls are discouraged.
 - iv. Window and door openings shall be maximized along the front of buildings, to make them inviting.
 - v. Architectural detailing, such as recessed windows and/or doors, bays, and textured materials or decoration, is encouraged to create variety and provide interest.
- (f) In areas where there is a well-established, consistent architectural and/or design character, new developments shall be consistent with the general character of that development. The existing proportional relationship between buildings, open space and building setbacks shall be maintained. New development shall be compatible with the color, height, materials, and design of the predominant style of existing buildings.
- (g) *Height.* Two-story buildings are encouraged.
- (h) *Roof Design.* A variety of roof types, heights and gable styles in proportion to building size is encouraged. Extensive use of flat, very low, or very steep pitched roofs generally should be avoided.
- (i) *Building materials in commercial and residential districts:*
- i. Facade materials such as brick, natural stone and wood are encouraged. The use of vinyl siding, metal siding, and imitation stone is discouraged.
 - ii. Trim such as finished grade painted or stained wood or anodized aluminum is encouraged.
 - iii. Windows should have anodized aluminum or wood frames, not bare aluminum frames.
 - iv. If awnings are part of the building design, externally lit canvas awnings are encouraged; internally lit plastic awnings are discouraged.
- (j) *Building materials in industrial districts.* To the maximum extent feasible, building materials in industrial districts should meet the standards of Section 4.13(E)(2)(i). However, it is recognized that industrial buildings have different requirements from commercial buildings, and therefore may require the use of different building materials.
- (k) *Mechanical Equipment*
- i. Rooftop mechanical equipment should be screened from public view, to the maximum extent feasible, through the use of architecturally compatible materials and techniques, such as paint color, parapet walls and/or similar treatment.
 - ii. Ground level mechanical and service equipment (such as air conditioning units and utility boxes and meters) should be screened from public view by

the use of landscaping, walls, fencing or other design treatment compatible with the architectural style and materials of the principal structure.

- iii. Garbage dumpsters and receptacles shall be placed out of view from adjacent properties, pedestrian ways (trails and sidewalks), Route 417, and adjoining streets, or shall be screened so that they are not visible from these viewpoints.
 - iv. For purposes of this section "public view" shall refer to all public roads and sidewalks within the corridor overlay district, with primary emphasis on views from Route 417 for motorists, pedestrians, and bicyclists.
- (l) Loading docks shall be located to the rear of the building and screened from view.
 - (m) Site grading for new construction shall blend in with surrounding site grades.
- (3) Maximum and Minimum Building Setback
- (a) During the Site Plan Review process the Planning Board may impose a maximum setback from the front property line. This setback may be necessary to maintain the existing building line in an area or may be necessary to insure that parking is placed behind the primary building.
 - (b) During the Site Plan Review process the Planning Board may waive the minimum front yard setback requirement to allow structures to be closer to the front property line than that which would ordinarily be allowed, in order to accomplish the goals and objectives of this Zoning Ordinance and the intent of the Route 417 Corridor Management Plan. Any such waiver shall clearly state the reasons for the waiver, and shall state the goals and objectives of this Zoning Ordinance and/or the intent of the Route 417 Corridor Management Plan that support the waiver.
- (4) Minimum lot width. The minimum lot width for new lots in an underlying C-1 Local Commercial Zoning District, which are created after the effective date of this Ordinance, shall be 100 feet.
- (5) Vehicular Access
- (a) Each lot abutting Route 417 shall be restricted to one access point, either a driveway or a new street, from Route 417. However, if a lot is large enough to provide for a minimum separation of 200 feet between access points, then more than one driveway per lot may be permitted by the Planning Board.
 - (b) Shared driveways for adjacent uses are encouraged, where feasible. Commercial driveways should be located along the side yard property line to encourage future shared use.
 - (c) Shared access shall be required for adjacent lots under the same ownership.

- (d) A minimum separation of 75 feet between driveways accessing Route 417 is recommended. If this minimum separation cannot be met, because of the location of prior driveways, or because the frontage width of a parcel is too small, the applicant shall make an effort to obtain a shared access agreement with an adjacent parcel. If circumstances so warrant, the Planning Board may approve a driveway with a minimum separation of less than 75 feet. The Planning Board may also determine, based on a traffic study, that a wider separation than 75 feet is warranted for safety.
 - (e) Driveways shall have adequate depth to prevent queuing onto the main roadway while waiting to proceed further into a site.
 - (f) Driveways shall be clearly defined. Under no circumstances shall the entire frontage of a lot be used as an accessway.
 - (g) Corner lot access
 - i. Where feasible, corner lots shall take access from the adjacent local street, not Route 417.
 - ii. Driveways on corner lots shall be located a minimum of 100 feet from the intersection, unless the Planning Board determines, based on a traffic study, that a larger separation is needed for safety. If the lot is too narrow to meet the corner clearance standard, the applicant shall make an effort to obtain a shared access agreement with an adjacent parcel. If such shared access agreement cannot be obtained, the driveway shall be located as far as possible from the intersection. Turning movements into or from this driveway may be restricted as necessary for vehicular and pedestrian safety.
 - iii. Driveways shall not be located within the boundary of turn or merge lanes of an intersection.
 - (h) If a site plan contains a stub street, the Planning Board shall require, as a condition of approval, that such street be extended in the future to serve currently undeveloped abutting properties.
 - (i) The Planning Board may require turning lanes and other improvements to off-site access roads as a condition of approval, when conditions so warrant.
- (6) Parking
- (a) Parking lots shall be located in the rear and/or side of buildings, where feasible.
 - (b) Interconnected parking lots for adjacent commercial developments are encouraged. Cross-access shall be provided at the rear of the lots.

- (c) In order to encourage shared driveways and cross-access, the parking requirements of Section 5.13(C) of this Zoning Ordinance may be reduced when two or more facilities share parking and the Planning Board makes the determination that the total parking needs are less than if the facilities were separate.

(7) Pedestrian Access

- (a) Sidewalks shall be provided along both sides of Route 417. Sidewalks shall have a minimum width of 5 feet and shall be constructed of concrete at least 4 inches thick. A landscaped buffer area between the sidewalk and Route 417 shall be provided. Where space permits, this buffer area shall contain street trees.
- (b) Developments shall provide safe pedestrian linkage to sidewalks along Route 417. Pedestrian walkways shall be provided directly from the building entrance(s) to the sidewalks.
- (c) Pedestrian walkways within parking areas are encouraged. At least one striped pedestrian crosswalk shall be provided between the parking lot and the building(s).

(8) Landscaping and Buffering

- (a) All site areas outside the building footprint, driveway, sidewalks, and parking areas shall be landscaped. Landscaping should include a variety of species with different heights and widths. Landscaping can include the retention of existing vegetation.
- (b) The amount and scale of landscaping and other buffering elements shall correspond to the proposed and adjacent land uses. More landscaping shall be required if the proposed use is not compatible with adjacent land uses. Landscaping and/or other buffering elements shall be required to screen site features such as garbage dumpsters and other potentially unsightly features.
- (c) Landscaped buffers between residential development and commercial or industrial development are required. Landscaped buffers may include the preservation of existing vegetated areas, buffer plantings, berms, and/or opaque fences.
- (d) *Parking Lots*: The area around the perimeter of parking lots shall be landscaped. The Planning Board may require that fencing and vegetation be used to screen the parking lot from views from Route 417 and other areas. In addition, in large parking lots (with fifty (50) or more parking spaces) interior landscaping is encouraged to break up the expanse of pavement; such landscaping should encompass at least five (5) percent of the paved area. Landscaping could include

trees, shrubs, annuals, and/or ground cover that is established on planting islands throughout the parking lot.

- (e) *Street trees.* Street trees shall be planted at 30 to 40 foot intervals for new development that has frontage along Route 417. Trees should consist of species with broad canopies. Trees should be planted in the lawn area between the curb and the sidewalk, where feasible; however, the Planning Board can approve other locations within the front yard, due to presence of utilities, or other site constraints.
- (f) Existing Vegetation
 - i. The preservation of mature plant species, hedgerows, and woodlots as a design element in a development's landscape plan is encouraged.
 - ii. The preservation and retention of existing trees over 8 inches in diameter (measured at breast height) is encouraged.
- (g) Landscaping shall be designed for easy maintenance. The selection of landscaping materials shall be compatible with the climate of western New York, soil type and condition, and water availability.
- (h) Landscaping materials shall have the following minimum sizes, at planting:

| Plant type | Minimum Size |
|-----------------------|----------------------|
| Deciduous trees | 3 inch caliper |
| Conifers | 6- to 8- foot height |
| Small flowering trees | 1 inch caliper |
| Large shrubs | 30 to 36 inch height |
| Small shrubs | 18 to 24 inch height |

- (i) The Planning Board may require a landscaping bond to be posted for a period of up to two years in an amount to cover the cost of the initial planting approved by the Board and for replacement planting during the first year.
- (9) Lighting and Glare
- (a) Exterior lighting and fixtures for building illumination shall blend with the architectural design.
 - (b) Exterior lighting shall provide adequate illumination for security purposes without excess glare. All lighting, including that in parking areas shall be located to minimize glare and illumination of adjacent and neighboring properties. Only the amount of illumination needed to do the job shall be used.
 - (c) To the maximum extent feasible, cut-off style fixtures meeting Illuminating Engineering Society of North America (IESNA) standards shall be installed for

all new and replacement lighting installations. This type of fixture directs light downward where it is needed.

- (d) To the maximum extent feasible, security lighting should meet IESNA cut-off requirements. Floodlights and non-shielded wall-mounted fixtures spill the most light and cause glare. If non-cut-off fixtures are used, the Planning Board may require that they be motion sensor lights that turn on only when intruders are detected.
- (e) Lighting for signs shall be kept to the minimum needed to read the signs. To the maximum extent feasible, signs shall be illuminated with downshielded lights installed above the sign.

(10) Outdoor Advertising Signs and Billboards. Outdoor Advertising Signs and Billboards are not permitted in the Route 417 East Corridor Overlay (CO-1) District.

Section 4.14 Route 417 West Corridor Overlay District (CO-2)

(A) Purpose. The purpose of the Route 417 West Corridor Overlay (CO-2) District is to foster and encourage commercial and other types of development close to the Village of Allegany, while preserving the rural character of the Town in areas designated for low density development. It is also the purpose of the zoning district to promote development that has consistency of architectural character and site design.

(B) Applicability

- (1) This corridor overlay district shall apply to all areas shown on the Town of Allegany Zoning Map as being within the CO-2 District.
- (2) All new development; redevelopment; land use activities; and change of use, regardless of whether or not construction activities are involved; within the CO-2 District shall be subject to site plan review, following the procedures in Article IX of this Zoning Ordinance, except the following:
 - (a) Construction of one- or two-family dwelling units and ordinary accessory structures, and related land use activities.
 - (b) Landscaping
 - (c) Ordinary repair or maintenance to existing structures, in cases where the use remains the same.
 - (d) Interior renovations or structural alterations within an existing building or structure, in cases where the use remains the same.
 - (e) Exterior alterations or additions to existing structures that would not increase the square footage of the existing structure by more than 25 %, in cases where the use remains the same.
 - (f) Agricultural use, as defined in Article II of this Ordinance.

(g) The sale of agricultural produce and temporary structures related to the sale of agricultural produce.

(3) Notwithstanding the foregoing sub-section, any exterior alterations to commercial and/or industrial buildings that will significantly change the architectural appearance of those structures, regardless of whether there will be an increase in building size, shall require Site Plan review and approval prior to the issuance of a building permit and/or zoning permit.

(4) When considering an application for site plan review, the Planning Board shall use the criteria delineated in Article IX, as well as the standards contained in Section 4.14(E), below. Where standards may conflict, the Planning Board shall use the more restrictive standard.

(C) Permitted and Special Permitted Principal Uses and Accessory Uses. Except as modified herein, the permitted, Special permitted, and accessory land uses allowed in the CO-2 District shall be the same as those in the underlying zoning district.

(D) Dimensional Regulations. Except as modified herein, the dimensional regulations of the CO-2 District shall be the same as those provisions of the underlying zoning districts.

(E) Development Standards

(1) General Criteria

(a) The proposed development shall be in harmony with the goals and objectives established in the Town's Planning and Development Policies.

(b) The proposed development shall be compatible with the general purposes and intent of this Zoning Ordinance.

(c) The proposed development shall concur with the intent of the Route 417 Corridor Management Plan.

(d) The proposed development shall have an overall clarity and coherence of design.

(2) Architectural Design

(a) New buildings shall relate to the surrounding environment with regard to texture, scale, massing, proportion, and color. A strong visual relationship between the building, the site, and adjacent development is vital for overall design compatibility. Emphasis shall be placed on creating an interesting visual impression. The use of different textures, complementary colors, shadow lines, detailing, and contrasting shapes to create an appealing facade is strongly encouraged. The use of single colors and/or blank walls is discouraged.

(b) Buildings shall be constructed to achieve a human scale and interest. Clusters of smaller buildings of varied size and orientation are encouraged, instead of vast single buildings.

- (c) Consistent setbacks for buildings along Route 417 frontage are encouraged. Primary buildings should be located close to the Route 417 frontage in order to create a more human-scaled, attractive environment.
- (d) Franchise-style architecture (also known as prototypical or corporate architecture) shall not be allowed, unless it is shown or modified to be in conformance with the objectives of this section of the Zoning Ordinance and the intent of the Route 417 Corridor Management Plan.
- (e) Development shall conform to the following criteria:
 - i. Buildings shall not overpower the surrounding buildings, uses and landscape.
 - ii. Care shall be given to the character of all sides of the building, not just the "front" facade.
 - iii. Long, uninterrupted blank walls are discouraged
 - iv. Window and door openings shall be maximized along the front of buildings, to make them inviting.
 - v. Architectural detailing, such as recessed windows and/or doors, bays, and textured materials or decoration, is encouraged to create variety and provide interest.
- (f) In areas where there is a well-established, consistent architectural and/or design character, new developments shall be consistent with the general character of that development. The existing proportional relationship between buildings, open space and building setbacks shall be maintained. New development shall be compatible with the color, height, materials, and design of the predominant style of existing buildings.
- (g) *Height.* Two-story buildings are encouraged.
- (h) *Roof Design.* A variety of roof types, heights and gable styles in proportion to building size is encouraged. Extensive use of flat, very low, or very steeply pitched roofs generally should be avoided.
- (i) *Building materials in commercial districts:*
 - i. Facade materials such as brick, natural stone and wood are encouraged. The use of vinyl siding, metal siding, and imitation stone is discouraged.
 - ii. Trim such as finished grade painted or stained wood or anodized aluminum is encouraged.
 - iii. Windows should have anodized aluminum or wood frames, not bare aluminum frames.
 - iv. If awnings are part of the building design, externally lit canvas awnings are encouraged; internally lit plastic awnings are discouraged.

- (j) *Building materials in industrial districts.* To the maximum extent feasible, building materials in industrial districts should meet the standards of Section 4.14(E)(2)(i). However, it is recognized that industrial buildings have different requirements from commercial buildings, and therefore may require the use of different building materials.
 - (k) Mechanical Equipment
 - i. Rooftop mechanical equipment should be screened from public view, to the maximum extent feasible, through the use of architecturally compatible materials and techniques, such as paint color, parapet walls and/or similar treatment.
 - ii. Ground level mechanical and service equipment (such as air conditioning units and utility boxes and meters) should be screened from public view by the use of landscaping, walls, fencing or other design treatment compatible with the architectural style and materials of the principal structure.
 - iii. Garbage dumpsters and receptacles shall be placed out of view from adjacent properties, pedestrian ways (trails and sidewalks), Route 417, and adjoining streets, or shall be screened so that they are not visible from these viewpoints.
 - iv. For purposes of this section "public view" shall refer to all public roads and sidewalks within the corridor overlay district, with primary emphasis on views from Route 417 for motorists, pedestrians, and bicyclists.
 - (l) Loading docks shall be located to the rear of the building and screened from view.
 - (m) Site grading for new construction shall blend in with surrounding site grades.
- (3) Maximum and Minimum Building Setback
- (a) During the Site Plan Review process the Planning Board may impose a maximum setback from the front property line. This setback may be necessary to maintain the existing building line in an area or may be necessary to insure that parking is placed behind the primary building.
 - (b) During the Site Plan Review process the Planning Board may waive the minimum front yard setback requirement to allow buildings to be closer to the front property line than that which would ordinarily be allowed, in order to accomplish the goals and objectives of this Zoning Ordinance and the intent of the Route 417 Corridor Management Plan. Any such waiver shall clearly state the reasons for the waiver, and shall state the goals and objectives of this Zoning Ordinance and/or intent of the Route 417 Corridor Management Plan that support the waiver.

- (4) Minimum lot width. The minimum lot width for new lots in an underlying C-1 Local Commercial Zoning District, which are created after the effective date of this Ordinance, shall be 200 feet.
- (5) Vehicular Access for lots used for commercial and industrial developments.
- (a) Each lot abutting Route 417 shall be restricted to one access point, either a driveway or a new street, from Route 417. However, if a lot is large enough to provide for a minimum separation of 300 feet between access points, then more than one driveway per lot may be permitted by the Planning Board.
 - (b) Shared driveways for adjacent uses are encouraged, where feasible. Commercial driveways should be located along the side yard property line to encourage future shared use.
 - (c) Shared access shall be required for adjacent lots under the same ownership.
 - (d) A minimum separation of 75 feet between driveways accessing Route 417 is recommended. If this minimum separation cannot be met, because of the location of prior driveways, or because the frontage width of a parcel is too small, the applicant shall make an effort to obtain a shared access agreement with an adjacent parcel. If circumstances so warrant, the Planning Board may approve a driveway with a minimum separation of less than 75 feet. The Planning Board may also determine, based on a traffic study, that a wider separation than 75 feet is warranted for safety.
 - (e) Driveways shall have adequate depth to prevent queuing onto the main roadway while waiting to proceed further into a site.
 - (f) Driveways shall be clearly defined. Under no circumstances shall the entire frontage of a lot be used as an accessway.
 - (g) Corner lot access
 - i. Where feasible, corner lots shall take access from the adjacent local street, not Route 417.
 - iv. Driveways on corner lots shall be located a minimum of 100 feet from the intersection, unless the Planning Board determines, based on a traffic study, that a larger separation is needed for safety. If the lot is too narrow to meet the corner clearance standard, the applicant shall make an effort to obtain a shared access agreement with an adjacent parcel. If such shared access agreement cannot be obtained, the driveway shall be located as far as possible from the intersection. Turning movements into or from this driveway may be restricted as necessary for vehicular and pedestrian safety.
 - ii. Driveways shall not be located within the boundary of turn or merge lanes of an intersection.

- (h) If a site plan contains a stub street, the Planning Board shall require, as a condition of approval, that such street be extended in the future to serve currently undeveloped abutting properties.
 - (i) The Planning Board may require turning lanes and other improvements to off-site access roads as a condition of approval, when conditions so warrant.
- (6) Vehicular access for residential subdivisions
- (a) Each subdivision shall have not more than two streets that access onto Route 417. Lots shall be designed so that houses have their frontage on an internal street. No individual driveways shall be permitted to access Route 417. Where necessary, a service road that parallels Route 417 may be installed to provide access to individual house lots.
 - (b) New subdivisions shall be encouraged to provide streets that connect to those in existing subdivisions. If a subdivision contains a stub street, the Planning Board shall require, as a condition of approval, that such street be extended in the future to serve currently undeveloped abutting properties.
- (7) Parking
- (a) Parking lots shall be located in the rear and/or side of buildings, where feasible.
 - (b) Interconnected parking lots for adjacent commercial developments are encouraged. Cross-access shall be provided at the rear of the lots.
 - (c) In order to encourage shared driveways and cross-access, the parking requirements of Section 5.13(C) of this Zoning Ordinance may be reduced when two or more facilities share parking and the Planning Board makes the determination that the total parking needs are less than if the facilities were separate.
 - (d) *Pedestrian walkways.* Pedestrian walkways within parking areas are encouraged. At least one striped pedestrian crosswalk shall be provided between the parking lot and the building(s).
- (8) Landscaping and Buffering
- (a) All site areas outside the building footprint, driveway, sidewalks, and parking areas shall be landscaped. Landscaping should include a variety of species with different heights and widths. Landscaping can include the retention of existing vegetation.

- (b) The amount and scale of landscaping and other buffering elements shall correspond to the proposed and adjacent land uses. More landscaping shall be required if the proposed use is not compatible with adjacent land uses. Landscaping and/or other buffering elements shall be required to screen site features such as garbage dumpsters and other potentially unsightly features.
- (c) Landscaped buffers between residential and commercial or industrial development are required. Landscaped buffers may include the preservation of existing vegetated areas, buffer plantings, berms, and/or opaque fences.
- (d) *Parking lots.* The area around the perimeter of parking lots shall be landscaped. The Planning Board may require that fencing and vegetation be used to screen the parking lot from views from Route 417 and other areas. In addition, in large parking lots (with fifty (50) or more parking spaces) interior landscaping is encouraged to break up the expanse of pavement; such landscaping should encompass at least five (5) percent of the paved area. Landscaping could include trees, shrubs, annuals, and/or ground cover that is established on planting islands throughout the parking lot.
- (e) *Street trees.* Street trees shall be planted at 30 to 40 foot intervals for new development that has frontage along Route 417. Trees should consist of species with broad canopies. Trees should be planted as close to the right-of-way as feasible. However, the Planning Board can approve other locations within the front yard, due to presence of utilities or other site constraints.
- (f) Existing Vegetation
 - i. The preservation of mature plant species, hedgerows, and woodlots as a design element in a development's landscape plan is encouraged.
 - ii. The preservation and retention of existing trees over 8 inches in diameter (measured at breast height) is encouraged.
- (g) Landscaping shall be designed for easy maintenance. The selection of landscaping materials shall be compatible with the climate of western New York, soil type and condition, and water availability.
- (h) Landscaping materials shall have the following minimum sizes, at planting:

| Plant type | Minimum Size |
|-----------------------|----------------------|
| Deciduous trees | 3 inch caliper |
| Conifers | 6- to 8- foot height |
| Small flowering trees | 1 inch caliper |
| Large shrubs | 30 to 36 inch height |
| Small shrubs | 18 to 24 inch height |

- (i) The Planning Board may require a landscaping bond to be posted for a period of up to two years in an amount to cover the cost of the initial planting approved by the Board and for replacement planting during the first year.

(9) Lighting and Glare

- (a) Exterior lighting and fixtures for building illumination shall blend with the architectural design.
- (b) Exterior lighting shall provide adequate illumination for security purposes without excess glare. All lighting, including that in parking areas shall be located to minimize glare and illumination of adjacent and neighboring properties. Only the amount of illumination needed to do the job shall be used.
- (c) To the maximum extent feasible, cut-off style fixtures meeting Illuminating Engineering Society of North America (IESNA) standards shall be installed for all new and replacement lighting installations. This type of fixture directs light downward where it is needed.
- (d) To the maximum extent feasible, security lighting should meet IESNA cut-off requirements. Floodlights and non-shielded wall-mounted fixtures spill the most light and cause glare. If non-cut-off fixtures are used, the Planning Board may require that they be motion sensor lights that turn on only when intruders are detected.
- (e) Lighting for signs shall be kept to the minimum needed to read the signs. To the maximum extent feasible, signs shall be illuminated with downshielded lights installed above the sign.

(10) Prohibited Uses in the Agricultural-Forestry District. The following uses shall not be permitted or allowed as special permitted uses in that portion of the underlying Agricultural-Forestry District that is within the CO-2 District:

- (a) Hotels, Motels, and Inns
- (b) Restaurant, Drive-through Restaurant, Bars and Taverns
- (c) Building supply store
- (d) Local Commercial Establishments
- (e) Gas and alternative fuel stations, Gas and alternative fuel stations with mini-marts;
- (f) Vehicle Sales Establishments
- (g) Professional and General Business Offices
- (h) Junkyards
- (i) Light manufacturing
- (j) Mini-marts
- (k) Adult Uses
- (l) Warehouses

- (m) Cineplex and Indoor Theaters
- (n) Mini storage facilities

(11) Outdoor Advertising and Billboards. Outdoor Advertising and Billboards are not permitted in the Route 417 West Corridor Overlay (CO-2) District.

Section 4.15 Wind Energy Overlay District (WE)

(A) Purpose. The purpose of the Wind Energy Overlay (WE) District is to provide a location for the placement of Commercial Wind Energy Conversion Systems (WECS).

(B) Applicability

- (1) This overlay district shall consist of all properties upon which Commercial WECS are constructed, and all adjoining and other properties granting noise or other setbacks.
- (2) The requirements in this district for Commercial WECS are in addition to all other requirements for Commercial WECS in this Ordinance.
- (3) In addition to the Initial Application materials in Section 5.25, the applicant shall provide a map of the proposed overlay district. For any application under review at the time this ordinance is adopted, the applicant shall submit the map within 60 days of the notice of adoption.

ARTICLE V SUPPLEMENTAL REGULATIONS

Section 5.01 Application

In addition to all other requirements set forth in this Ordinance, the supplementary regulations contained herein shall apply, except as specified, in all zoning districts.

Section 5.02 Temporary Structures and Uses

(A) Construction Trailers

Temporary trailers, used for construction equipment storage and/or project management offices, are permitted in any zoning district during the period that the construction work is in progress pursuant to a valid building permit. The trailers shall be removed upon the completion of the construction work.

(B) Temporary residential buildings

- (1) Subject to the issuance of a Temporary Special Use Permit by the Planning Board pursuant to Article VIII of these regulations, temporary buildings or trailers for living purposes may be permitted in any zoning district in which single family homes are permitted, during the period that the construction work is in progress pursuant to a valid building permit. The temporary structure shall be removed upon the completion of such work.
- (2) The Temporary Special Use Permit shall be valid for a period of one year from date of issuance, and may be renewed by the Planning Board for up to one additional year.
- (3) Prior to the issuance of the Temporary Special Use Permit, the applicant shall provide documentation that adequate potable water supply and sanitary sewage disposal systems will be provided to serve the temporary residence.

(C) Temporary Motor Vehicle Sales

- (1) Permits Required
 - (a) This section shall apply to all sales of motor vehicles by dealers that are held as a special event on a premises that is not otherwise permitted for such use.
 - (b) No temporary motor vehicle sales event can be conducted within the Town of Allegany unless and until both a Temporary Special Use Permit and a Temporary Vehicle Sales Event Permit have been issued by the Town of Allegany.

- (c) For purposes of this section, "premises" shall be construed to mean an entire site in one ownership. A shopping plaza shall be considered to be one premises.
- (d) For purposes of this section, a "dealer" shall be anyone who meets the standard in NYS Department of Motor Vehicles, *Part 78, Motor Vehicle Dealers & Transporters Regulations*, which is: "Any person who sells, or offers for sale more than five motor vehicles, motorcycles or trailers, other than mobile home trailers, in any calendar year or who displays or permits the display of three or more motor vehicles, motorcycles or trailers, other than mobile home trailers, for sale at any one time or within any one calendar month upon premises owned or controlled by him, if such vehicles were purchased, acquired or otherwise obtained by such person for the purpose of resale, will be regarded as a dealer." (*Section 78.1 Introduction*)
- (e) For purposes of this section, a "motor vehicle" will include automobiles, boats, campers, recreational vehicles, mopeds, motorcycles, snowmobiles, trucks, and similar vehicles.

(2) Temporary Special Use Permit

- (a) No temporary motor vehicle sales event shall be held without first obtaining a Temporary Special Use Permit from the Planning Board pursuant to Article VIII of these regulations.
- (b) The Temporary Special Use Permit shall be valid for a period of no more than one year from date of approval by the Planning Board. Subsequent Temporary Special Use Permits may be issued, following the procedures in Article VIII of these regulations.
- (c) Each Temporary Special Use Permit will allow the permit holder or his/her agent or designee to apply for up to four (4) Temporary Vehicle Sales Event Permits per premises over the duration of the Temporary Special Use Permit.
- (d) A Temporary Special Use Permit shall be required for each premises on which temporary motor vehicle sales are proposed.
- (e) Application requirements for a Temporary Special Use Permit
 - i. Applications shall be in writing and shall contain sufficient information to evaluate the proposed temporary vehicle sales event's compliance with the requirements of this Section.
 - ii. Evidence of either property ownership or written authorization of the owner of the property.
 - iii. Contact information (name, address and phone numbers) for (a) the applicant and (b) the property owner, if different than the applicant.
 - iv. A site plan showing (a) all existing structures and other site improvements, (b) the location of the sales event, (c) any temporary structures (buildings,

tents, etc.) that may be used for a temporary sales office or other purpose, and (d) location of proposed parking area for customers attending the sales event. The building setback lines required by the zoning ordinance shall be designated. Ingress and egress to the site shall be shown. The site plan shall be legible, drawn to scale, and accurate.

- v. The number of vehicles for sale expected to be on site.
- vi. Hours of operation and a lighting plan for hours of operation after sunset, if any.
- vii. Information regarding any music, loudspeakers, and similar sound-creating equipment that will be used during the sales event, if any.
- viii. Any other information reasonably required by the Planning Board to make a determination on the application.
- ix. Non-refundable application fee for Special Use Permit
- x. It is the responsibility of the applicant to apply for the Temporary Special Use Permit in a timely manner. It is recommended that the application be made a minimum of three months prior to the first intended sales event.

(f) Criteria for issuance of Temporary Special Use Permit

The Planning Board may issue a Temporary Special Use Permit for temporary Motor Vehicle Sales, with a duration not to exceed one year, for a premises located in the C-1, C-2, I-1 or I-2 Zoning Districts, upon a finding that the proposal will not conflict with neighboring businesses or residents. In making this determination, the Planning Board shall consider the following factors, in addition to the criteria in Article VIII:

- i. The site is adequate to support the level of activity that is proposed.
- ii. The proposal conforms to the standards in Section 5.02(C)(4), Standards for the conduct of a Temporary Motor Vehicle Sales Event.
- iii. Traffic: There is adequate ingress and egress to the premises for automobiles and pedestrians, traffic flow on area streets will not be significantly impacted, and the event will not adversely affect emergency response to the site or neighborhood.
- iv. Parking: There is adequate, paved space on the premises to accommodate parking for both the temporary event and the regular use of the site.
- v. The effect of the event on surrounding properties. The event shall not create a nuisance that would be detrimental to adjacent and nearby properties. Nuisance factors shall include, but not necessarily be limited to, noise, odor, smoke, glare, excessive lighting, dust, and/or vibrations.

The Planning Board may impose any conditions it deems appropriate, including but not limited to:

- i. Limiting the size of the event
- ii. Modifying the location of the event on the premises.
- iii. Limiting the hours of operation
- iv. Limiting the number, size and location of any temporary lighting and/or signs

If the Planning Board denies the Temporary Special Use Permit, the Board shall issue a written determination that lists the reasons for the denial, pursuant to Article VIII of this Ordinance.

(3) Temporary Vehicle Sales Event Permit

- (a) No temporary motor vehicle sales event shall be held without first obtaining a Temporary Vehicle Sales Event Permit from the Town of Allegany Code Enforcement Officer (CEO). All Temporary Vehicle Sales Event Permits shall be issued pursuant to a Temporary Special Use Permit granted by the Planning Board.
- (b) Each Temporary Vehicle Sales Event Permit shall be valid for one event only, and shall only be issued if the Planning Board has issued a Temporary Special Use Permit for the premises. The Temporary Vehicle Sales Event Permit shall be valid for a maximum of thirty (30) consecutive days, which shall include set-up on the site and removal of the event from the site. The exact time period for which the Permit is valid shall be specified in the Temporary Vehicle Sales Event Permit.
- (c) Application requirements for a Temporary Vehicle Sales Event Permit
 - i. A copy of the Notice of Decision of the Temporary Special Use Permit under which the Temporary Vehicle Sales Event Permit is being requested.
 - ii. Written permission from the holder of the Temporary Special Use Permit to make the application and conduct the event, if the Temporary Vehicle Sales Event Permit applicant is not the person to whom the Temporary Special Use Permit was issued. In addition, the written consent of the owner(s) of the lot or parcel on which a sale or event is conducted shall be required, if the property owner is not the holder of the Temporary Special Use Permit.
 - iii. Contact information (name, address and phone numbers) for (a) the applicant; (b) the person(s) having the management or supervision of the event during the time that it will be conducted and the capacity in which such person(s) will act (that is, whether as proprietor, agent or otherwise); (c) the on-site manager(s), if different from those listed in (b) above; and (d) the name and address of the person, firm or corporation on whose account the event will occur, if any. The application shall provide the names of all persons who, at any time, will have the management or supervisory role on site.
 - iv. Days of the week the event will occur, hours of operation for each day, and duration of the event. Lighting plan for hours of operation after sunset.

- v. A site plan showing the location of the sales event and temporary sales office, all existing structures, and other site improvements. The site plan shall show the proposed parking area for customers and any proposed temporary buildings, including tents. The building setback lines required by the zoning ordinance shall be designated. Ingress and egress to the site shall be shown. The site plan shall be legible, drawn to scale, and accurate. The site plan shall be substantially consistent to the site plan approved by the Planning Board.
- vi. The number of vehicles for sale expected to be on site.
- vii. Information regarding any music, loudspeakers, and similar sound-creating equipment that will be used during the event, if any. This equipment shall only be permitted if it was included in the Temporary Special Use Permit granted by the Planning Board.
- viii. Non-refundable Temporary Vehicle Sales Event Permit fee
- ix. It is the responsibility of the applicant to acquire all needed permits in a timely manner. It is recommended that applications for a Temporary Vehicle Sales Event Permit be submitted to the CEO a minimum of forty-five (45) calendar days prior to the first day of the event.

(d) Criteria for issuance of Temporary Vehicle Sales Event Permit

The CEO shall issue the Temporary Vehicle Sales Event Permit if he/she determines that (1) the event is allowable under the Temporary Special Use Permit and (2) the application is substantially consistent with the approved Temporary Special Use Permit, including any conditions or modifications and (3) the event will conform to the standards in Section 5.02(C)(4).

(4) Standards for the conduct of a Temporary Motor Vehicle Sales Event

- (a) Each temporary sales event shall have a maximum duration of thirty (30) consecutive days. Duration shall include the time to set up before the sale and clean up the site after the sales event. The duration of each event shall be specified, by date, in the Temporary Vehicle Sales Event Permit.
- (b) Hours of operation shall be limited to between 9:00 a.m. and 9:00 p.m. In its Temporary Special Use Permit approval, the Planning Board may impose shorter hours of operation in order to reduce impact to the neighborhood.
- (c) There shall be no more than four (4) events per premises per year. Sales events on a premises shall be a minimum of fifteen (15) days apart and there shall be no more than one (1) sales event per calendar month per premises. In its Temporary Special Use Permit approval, the Planning Board may prohibit sales events during certain times of the year, in order to ensure that there is adequate parking on site to accommodate the regular uses on a premises (for example, during the Thanksgiving and Christmas holidays).

- (d) No more than four (4) Temporary Vehicle Sales Event Permits shall be issued to the same or affiliated applicant in any calendar year, regardless of the premises on which they occur.
 - (e) All sales event activity (location of vehicles for sale, temporary structures, and parking) shall conform to the minimum setbacks required by this Ordinance.
 - (f) All Temporary Vehicle Sales Events shall be conducted on a paved surface.
 - (g) The holder of the Temporary Vehicle Sales Event Permit shall be responsible for all trash removal during and after the event. Trash, including balloons, shall not be permitted to blow onto areas outside of the approved sales event location.
 - (h) As part of its Temporary Special Use Permit approval, the Planning Board shall set standards for the size and location of any temporary signage, including pennants, banners and flags. Temporary signs shall only be permitted for the same duration and same location as the event. The total area of temporary signage, including banners and pennants, shall not exceed 32 square feet. All temporary signage shall be securely installed.
 - (i) As part of its Temporary Special Use Permit approval, the Planning Board shall set standards for the size and location of any temporary lighting. Temporary lighting shall only be permitted if there is inadequate lighting on site for safety of staff and customers of the event. All temporary lighting shall be securely installed.
 - (j) As part of its Temporary Special Use Permit approval, the Planning Board shall determine if loudspeakers, music or similar noise-making equipment may be allowed. Any amplified sound from the event shall not be so loud that it causes an annoyance to any near-by residences. If permitted, all noise-producing equipment shall comply with the Excessive Noise Control Law of the Town of Allegany, Local law 1 of 2005.
 - (k) Vehicles for sale and the parking areas for customers shall be arranged so as not to impede sight lines for vehicles or pedestrians entering and/or exiting the site, or for vehicles and pedestrians travelling within the site.
 - (l) Vehicles for sale and the parking areas for customers shall not block aisles in a parking lot that will be used by through traffic.
- (5) Violations
- (a) Failure to comply with the terms and conditions of a Temporary Vehicle Sales Event Permit and/or the requirements of this Section 5.02(C) may be grounds for immediate suspension of the event until such time as the noncompliance is remedied. Initially, the CEO shall verbally inform the on-site event manager of

the noncompliance and provide a reasonable opportunity for the noncompliance to be corrected. If the noncompliance has not been remedied within the timeperiod prescribed by the CEO, the CEO shall issue a written suspension order and shall also cite the on-site manager, the Temporary Vehicle Sales Event Permit holder, and the Temporary Special Use Permit holder with an appearance ticket for the violation.

- (b) If a Temporary Vehicle Sales Event Permit holder has been determined by the CEO to be non-compliant with the terms and conditions of the Permit, as evidenced by a written suspension order, that permit holder and the business entity represented by the permit holder shall be ineligible for another Temporary Vehicle Sales Event Permit for eighteen (18) months following the date of the suspension order.
- (c) The Town may also take other enforcement action pursuant to Article X of this Zoning Ordinance.

Section 5.03 Lots of Record

(A) Lots of Record

- (1) Any single lot or parcel of land, held in one ownership, which was of record at the time of adoption of this Ordinance, but which does not meet the requirements for minimum lot width and/or area, may be used for a permitted use.
- (2) Any lot that was of record at the time of adoption of this Ordinance and that was duly recorded in the Cattaraugus County Clerk's Office as part of a recorded residential subdivision and that has Cattaraugus County Health Department approval, shall be allowed to be developed in said subdivision in accordance with the original subdivision plan as filed.

(B) 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, are contiguous and are held in one ownership, they may be used as one zoning lot for such use.

Section 5.04 Access to Street

Every building shall be constructed on a lot which has legal access to an existing street. Such street may be either a public street or a private street. If the lot does not abut an existing street, access may be provided in the form of a permanent access easement that has been legally recorded in the Office of the Clerk of Cattaraugus County; a copy of the recorded easement shall be provided to the Town Code Enforcement Officer at the time of application for a building permit.

Section 5.05 Height Regulations

- (A) Spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, silos, grain elevators, flag poles, or any appurtenances usually required to be placed above the roof level and not intended for human occupancy shall be exempt from the height limitations contained in Schedule B.
- (B) Wind turbines (WECS) are not exempt from height limits and are governed by the height limitations in Section 5.24, Non-Commercial Wind Energy Conversion Systems, and Section 5.25, Commercial Wind Energy Conversion Systems, of this Ordinance.
- (C) Telecommunications facilities are not exempt from height limits and are governed by the height limitations in Section 5.22, Telecommunications Facilities, of this Ordinance.

Section 5.06 Setbacks and Required Yards

- (A) The front yard setback shall be measured from the right-of-way line.
- (B) The lot width shall be measured at the front yard setback line.

(C) Parking Areas

The minimum front, rear, and side yard setbacks for the principal building, which are listed on Dimensional Regulations - Schedule B, shall also apply to loading and stacking areas and to parking lots and parking areas for use by more than four vehicles, except that parking lots that serve commercial and industrial land uses in the C-1, C-2, I-1 and I-2 Zoning Districts may come to within 20 feet of the front property line. Parking for all other uses in these districts shall maintain the same front yard setback as the principal building.

(D) Buffer Yards

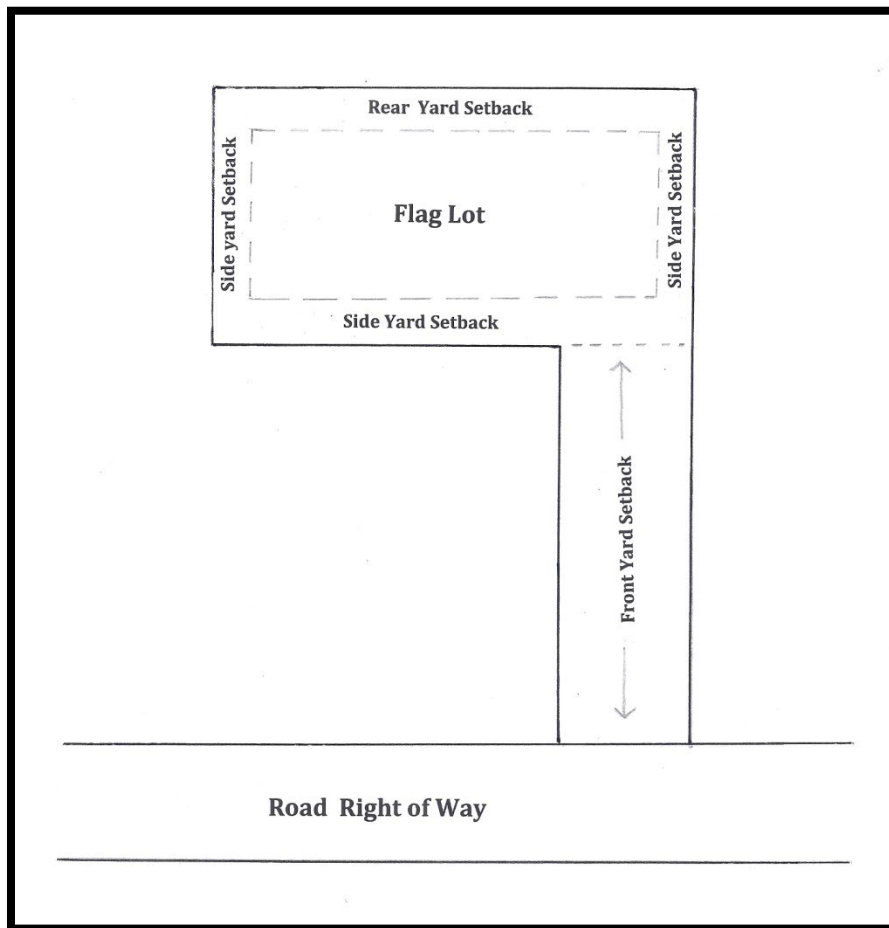
Where a commercial or industrial district abuts the R-1 District, a buffer yard of not less than 40 feet shall be required on the rear and side yards of the commercial or industrial property, between such use and the abutting residential district. Also See Section 5.15(B)(7).

(E) Flag lots

- (1) The narrow access strip ("staff" or "panhandle" portion of the lot) shall be a minimum of 30 feet wide for its entire length.
- (2) The rear portion of the lot shall comply with the minimum lot width and other dimensional regulations of this Ordinance for the zoning district in which it is located.

- (3) The access strip, when less than the minimum lot width in the zoning district in which it is located, shall not be used in computing the minimum required lot area.
- (4) The entire access strip shall be considered to be the required front yard setback, and the side closest to and parallel to the road shall be considered to be a side yard, for purposes of delineating the required setbacks. (See Figure 1).
- (5) The access strip shall be part of the lot which it serves and shall not be a separate parcel.
- (6) No more than one flag lot can be served by the same access strip.
- (7) The driveway within the access strip shall be located a minimum of five feet from abutting property lines. The driveway shall be constructed so that stormwater does not drain onto abutting properties.
- (8) No building or structure can be constructed in the access strip, except for a driveway and drainage features.

Figure 1. Setbacks for Flag Lots



(F) Projections into Yards

The following projections shall be allowed within required yards:

- (1) The ordinary projection of window sills, belt courses, cornices and other ornamental features, not to exceed one (1) foot.
- (2) Balconies, bay windows, chimneys and roof projections, not to exceed 2 feet.
- (3) Retaining wall.
- (4) Unenclosed or non-weatherproofed porches or decks in rear yards, but not more than 1/4 the required depth of such yard.
- (5) Unenclosed steps not extending above the floor level of the first story, provided such steps are at least 5 feet from any lot line.
- (6) A paved terrace provided that such terrace is unroofed and without walls or other forms of enclosure and at least 5 feet from any lot line.
- (7) Fences or walls along property lines, provided that such fence or wall shall be at least two feet distant from any existing or future street line.

(G) Sight Distance

Clear vision shall be maintained on corner lots in a triangle formed between points on the front and side lot lines thirty-five (35) feet from the edge of the roadway surface at the intersection. Within that area no fence, wall, ornamental gate or portal, bushes, shrubbery or stored material shall be permitted higher than two (2) feet above the average finished grade of the lot. Trees shall be permitted within the area only if maintained and trimmed so that no branches or foliage are less than eight (8) feet above the average finished grade of the lot. No building shall be located within the area.

Section 5.07 Minimum Lot Area

- (A) The Cattaraugus County Health Department may require a larger minimum lot size than the minimum lot areas required in Section 4.03 Dimensional Regulations - Schedule B.
- (B) The minimum lot area in the R-1 Zoning District for a detached single-family dwelling may be reduced by 25% if either a municipal sanitary sewage disposal system or a public water supply system is provided. The minimum lot area may be reduced by 50% if both systems are provided. If the minimum lot size is reduced by either 25% or 50%, the minimum front, side and rear yards (minimum setbacks) may be reduced by 20%. [See Section 4.04(C)(2)].
- (C) Minimum required lot area shall be calculated from the right-of-way line and shall not include any area within the right-of-way.

(D) Townhouses and Multiple Dwellings

Where permitted, multiple dwellings (buildings containing three or more dwelling units) and townhouses and other attached single-family dwellings shall have a maximum density of six (6) dwelling units per acre. These housing types shall only be permitted in locations that have both a municipal water supply system and a municipal sanitary sewage disposal system. See Section 5.23, Multiple Dwellings and Townhouses.

(E) Two-family Dwellings

Where permitted, each two-family dwelling shall be located on a lot that is a minimum of two acres in size. However, the two acre minimum lot size may be reduced by 25% if either a municipal sanitary sewage disposal system or a public water supply system is provided. The minimum lot area may be reduced by 50% if both systems are provided. No reduction in the minimum front, side and rear yards may be allowed, unless a variance is granted.

Section 5.08 Minimum Gross Floor Area

The minimum gross floor area for all dwelling units shall be as specified in this section.

(A) Single-family Dwellings

- (1) In the R-1 and C-1 Zoning Districts a single-family residential dwelling unit shall:
 - (a) contain not less than 1,150 square feet of gross floor area for a one-story dwelling unit or not less than 1,400 square feet of gross floor area for a two-story dwelling unit.
 - (b) be built on a permanent foundation.
 - (c) have minimum width of twenty-four (24) feet.
 - (d) have a roof pitch of not less than 4 to 12.
 - (e) have an overhang of at least 8 inches.

- (2) In an A-F Zoning District a single-family residential dwelling unit shall contain not less than 800 square feet of gross floor area for a one-story dwelling unit or not less than 1,200 square feet of gross floor area for a two-story dwelling unit.

(B) Two-Family Dwellings

In any district where permitted, a two-family residential dwelling unit shall contain not less than 650 square feet of gross floor area per dwelling unit.

(C) Seasonal Dwellings

A Seasonal Dwelling in any Zoning District is exempt from the minimum floor area requirement.

Section 5.09 Manufactured Home Regulations

(A) Intent. The purpose and intent of this Section are:

- (1) To provide housing opportunities for all segments of the regional population.
- (2) To stabilize and conserve property values, and to facilitate the creation of a convenient, attractive and healthy living environment.

(B) Manufactured Homes on Individual Lots

Where permitted in Section 4.02, District Use Regulations, Schedule A, one manufactured home or mobile home may be located on a lot where a single family home is permitted, provided the home conforms to all the requirements of the zoning district in which it is located, to all the dimensional regulations contained in Section 4.03, Dimensional Regulations, Schedule B and this section, to all the requirements contained in Section 5.08, Minimum Gross Floor Area, of this Article, to all other applicable standards in this zoning ordinance, and to the following standards:

- (1) All manufactured homes shall meet all requirements of the Federal Manufactured Housing Construction and Safety Standards Act of 1974 and bear a valid HUD sticker.
- (2) All mobile homes shall conform to the standards that were in effect at the time the home was constructed. All mobile homes shall conform to all applicable specifications of the NYS Building Code, including those provisions relating to water supply, sewer services and adequate heat.
- (3) The manufactured or mobile home shall be the principal use on a single family lot.
- (4) The manufactured or mobile home shall be placed on a permanent foundation.
- (5) All manufactured or mobile homes that are not placed on a closed foundation below the frost line shall be skirted. Solid skirting shall enclose the area from the bottom of the floor of the manufactured or mobile home and the ground. Skirting shall consist of masonry type materials, including cement, concrete, brick and natural stone. Wood, wood products, metal, plastic or other non-masonry type materials shall not be allowed as an exterior finish for skirting, unless these materials are part of a system specifically designed for manufactured homes.
- (6) Where necessary, water supply and sewage disposal systems shall be approved by the Cattaraugus County Health Department in writing prior to the issuance of a building permit.
- (7) No more than one manufactured home or mobile home may be located on a lot.

(C) Manufactured Home Parks

- (1) Where permitted in Section 4.02, District Use Regulations, Schedule A, a Manufactured Home Park may be allowed upon the granting of a Special Use Permit by the Town of Allegany Planning Board, in accordance with the procedures in Article VIII of this Zoning Ordinance and the approval by the Planning Board of a Site Plan in accordance with the procedures of Article IX of this Ordinance.
- (2) All Manufactured Home Parks shall conform to the following standards:
 - (a) The Manufactured Home Park shall be designed and graded to insure proper drainage.
 - (b) The Manufactured Home Park shall contain a minimum of five (5) acres.
 - (c) Manufactured home spaces shall be a minimum of 5,000 square feet, shall be at least 30 feet wide and shall be clearly defined. The minimum area of a manufactured home space shall not include interior access roads or the perimeter yards required in sub-section 5.09(C)(2)(j).
 - (d) No more than one manufactured home or mobile home may be located on a manufactured home space.
 - (e) There shall be at least a 20 foot clearance between each manufactured or mobile home, including any deck, carport or other feature that is permanently attached to the mobile or manufactured home. Sheds or any other accessory, detached structures shall maintain a minimum clearance of 10 feet from any manufactured or mobile home, including that with which it is associated. If the Manufactured Home Park includes a community building, swimming pool or similar features, there shall be a minimum 20 foot separation between a manufactured or mobile home and those community features.
 - (f) All manufactured home spaces shall abut upon an interior access road of not less than 20 feet in width. The access road shall have unobstructed access to a public street or highway.
 - (g) Each manufactured home space shall contain a hard-packed or paved area that can accommodate a minimum of two personal vehicles.
 - (h) The manufactured or mobile home and the required parking area shall be set back a minimum of 20 feet from the edge of the interior access road, to allow for adequate snow storage and plowing.
 - (i) All manufactured or mobile homes located in a manufactured home park shall comply with dwelling size requirements of a minimum of 800 square feet.

- (j) The perimeter of the Manufactured Home Park shall comply with the setback and minimum yard requirements of the zoning district in which it is located.
- (k) Prior to the approval of a Special Use Permit, the applicant shall provide approvals from the Cattaraugus County Health Department, or other agency having jurisdiction, that adequate provision has been made for water supply and sanitary sewerage disposal.
- (l) Adequate garbage disposal facilities, as approved by the Cattaraugus County Health Department, shall be provided.
- (m) Every Manufactured Home Park shall have a fire protection plan approved by the Fire Department having local jurisdiction.
- (n) As part of the application review, the Planning Board shall review and approve a landscaping plan for the Manufactured Home Park.

(D) Recreational Vehicles

- (1) In the R-1, A-F and C-1 zoning districts Recreational Vehicles may be located and used for residential purposes in the Town for up to 30 days. If the vehicle will be used for residential purposes for a longer period, a Temporary Use Permit shall be obtained from the Code Enforcement Officer, who may issue the Permit for a total consecutive period up to ninety (90) days.
- (2) Recreational vehicles, utility trailers and/or boats owned by residents of the Town may be stored on the property of the owner for an unlimited period, provided that no residence is taken therein or business conducted therewith, and provided that the stored vehicle adheres to all front yard and side yard setbacks of the zoning district in which it is located.

(E) Dependent Manufactured Homes

- (1) Where permitted in Section 4.02, District Use Regulations, Schedule A, a manufactured home for dependent care use may be located within the town with a special use permit obtained from the Planning Board in accordance with Article VIII of this Zoning Ordinance.
- (2) The dependent manufactured home shall comply with the following standards:
 - (a) The dependent manufactured home is an accessory use on a single family lot.
 - (b) The dependent manufactured home is occupied by a family member of the resident of the lot. The occupant of the dependent manufactured home must be dependent upon the family for care.

- (c) The water supply and sanitary sewage disposal systems are adequate to serve the dependent manufactured home.
- (d) The dependent manufactured home shall comply with the required setbacks for a principal use on the lot.
- (e) The dependent manufactured home must be removed within three (3) months of the dependent permanently vacating the manufactured home.

Section 5.10 Home Occupations

(A) Where permitted in Section 4.02, District Use Regulations, Schedule A, a home occupation shall conform to all the requirements of this section and to any other applicable regulations of this Ordinance. Activities that conform to the requirements for Minor Home Occupations shall be allowed as-of-right (permitted use). All other activities shall be considered to be Major Home Occupations and shall require the issuance of a Special Use Permit by the Planning Board in accordance with the procedures contained in Article VIII of this Ordinance, prior to commencing operation as a Major Home Occupation.

(B) General Standards

All Home Occupations, whether Major or Minor, shall conform to the following standards:

- (1) The home occupation shall be conducted by the resident(s) of the property on which it is located.
- (2) There shall be no more than two home occupations per lot.
- (3) A home occupation may be conducted in either the residence or in an accessory building, such as a garage. The use as a home occupation shall not require any modification not customarily found in a dwelling or typical residential accessory building.
- (4) The home occupation shall be clearly incidental and accessory to the use of the property as a residence and shall not change the residential character of the property.
- (5) The space used for the home occupation shall not be any larger than 25 percent of the total gross floor area of the home, regardless of whether the home occupation is located in an accessory building or in the residence. The most recent Assessor records will be used to determine gross floor area. If there are two home occupations on the lot, the space used for both home occupations shall not exceed 25 percent of the total gross floor area of the home.
- (6) The dwelling shall not have any exterior evidence of the home occupation, except for one business identification sign. See Section 5.12 of this Ordinance.

- (7) The home occupation shall be conducted wholly within the enclosed walls of the dwelling unit or accessory building. There shall be no outdoor storage or display of material or equipment.
- (8) The home occupation shall not generate electrical interference, dust, noise, odors, vibration, glare, smoke or traffic that disturbs the peace, quiet, and enjoyment of the neighborhood in which it is located.
- (9) Customer/client visits to the home occupation shall be limited to the hours from 7 a.m. to 8 p.m.
- (10) All parking for customers of the home occupation shall be accommodated on-site, in addition to the required parking spaces for the residential use of the property.
- (11) Delivery vehicles used to deliver goods to a home occupation are limited to passenger vehicles, United States Postal Service mail carriers, and express carriers such as UPS or FedEx.

(C) Minor Home Occupations

- (1) In addition to the General Standards, above, a Minor Home occupation shall conform to all of the following requirements:
 - (a) There are no on-premise employees, other than the resident(s) of the property on which the home occupation is located.
 - (b) The home occupation shall not generate more than 5 customer/client visits in any one day, on average over a one-month period.
 - (c) The home occupation shall receive no more than two deliveries and/or pick-ups per day from the delivery vehicles and services listed above.
 - (d) There is no in-person retail sale of merchandise as the primary purpose of the home occupation. However, incidental retail sales associated with a permitted home occupation, such as the sale of hair care products in a beauty shop, are permitted.
- (2) Permitted minor home occupations may include, but are not limited to, the following, provided they meet the criteria for minor home occupations contained herein:
 - (a) Office for authors and composers.
 - (b) Office of a salesman, sales representative, or manufacturer's representative.

- (c) Office for professionals such as architects, planners, brokers, counselors, clergy, draftspersons and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, graphic designers, construction contractors, landscape designers, surveyors and similar professions.
- (d) Tutoring of not more than one student at a time.
- (e) Instruction in a musical instrument for not more than one student at a time.
- (f) Studios for artists, sculptors, musicians, photographers and craft persons (such as weaving, jewelry making, pottery, woodworking, taxidermy and similar arts/crafts), provided that retail sales occur off site, except for occasional art tour events.
- (g) Workrooms for tailors, dressmakers, milliners, haberdashers and upholsterers.
- (h) Direct sale product distribution, for products such as Avon, Tupperware, etc.
- (i) Typing, word processing services, data processing, computer programmers, web designers.
- (j) Cake decorating and baking/cooking/catering, provided there are no on-site retail sales.
- (k) Beauty parlors and barber shops
- (l) Pet grooming establishments
- (m) Small appliance repair (computers, televisions, etc.)
- (n) Small engine repair (lawn mowers, snowblowers, etc.)

(D) Major Home Occupations

- (1) The following are considered to be Major Home Occupations:
 - (a) Any home occupation that exceeds the standards in Section 5.10(C)(1), including the occupations listed in Section 5.10(C)(2).
 - (b) Any home occupation that has on-site retail sales as its primary purpose.
 - (c) Studios for artists, sculptors, musicians, photographers and craft persons (such as weaving, jewelry making, pottery, woodworking, taxidermy and similar arts/crafts), that also include retail sales on-site.

- (d) Any occupation not listed in Section 5.10(C)(2), which would otherwise fit the criteria for a home occupation.
- (2) No Major Home Occupation shall be put into operation without first obtaining a Special Use Permit in accordance with the provisions of this Ordinance. In addition to the General Standards, above, a Major Home Occupation shall conform to the following requirements:
 - (a) There shall be no more than one on-premise employee, in addition to the resident(s) of the property on which the home occupation is located. If there is an employee, an additional on-site parking space shall be provided to accommodate the employee.
 - (b) The Planning Board may establish, as a condition of approval, a maximum limit for the number of customer/client visits in any one day.
 - (c) The Planning Board may limit the hours of operation to be more restrictive than the standard in Section 5.10(B), above.

(E) Prohibited Home Occupations

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

- (1) Funeral homes
- (2) Automobile body repair work, including painting of automobiles;
- (3) Repair of automobiles, snowmobiles, trucks or other similar vehicles
- (4) Restaurants and bars
- (5) Adult Uses

Section 5.11 Auxiliary Dwelling Units

- (A) Where permitted in Section 4.02, District Use Regulations, Schedule A, an auxiliary dwelling unit may be allowed as an accessory use on a lot containing one single family home upon the granting of a Special Use Permit by the Town of Allegany Planning Board, in accordance with the procedures in Article VIII of this Zoning Ordinance.
- (B) All auxiliary dwelling units shall comply with the following standards:
 - (1) There shall be no more than one (1) auxiliary dwelling unit per lot.
 - (2) The applicant shall demonstrate that the existing sewage disposal system and water supply are adequate to serve the auxiliary dwelling unit.

- (3) The applicant shall show that there is adequate off-street parking for the occupants of the auxiliary dwelling unit, in addition to the parking required for the primary residence. A minimum of one on-site parking space shall be provided for the auxiliary dwelling unit, in addition to the parking required for the principal dwelling. Parking spaces shall be located so that both the single-family dwelling and the auxiliary dwelling unit shall have at least one parking space with direct and unimpeded access to the street without passing through a parking space designated to serve the other dwelling unit.
- (4) An auxiliary dwelling unit may be located in:
 - (a) the principal residence, or
 - (b) an existing accessory building, such as a garage, whether attached or detached, or
 - (c) in an addition to the principal residenceIf an auxiliary dwelling unit is located in the principal dwelling, the entry to such unit and its design shall be such that, to the maximum degree feasible, the appearance of the building will remain that of a single family dwelling.
- (5) The auxiliary dwelling unit shall comply with all applicable regulations in this Ordinance, including the lot coverage and other dimensional regulations contained in Section 4.03, Dimensional Regulations, Schedule B. An auxiliary dwelling unit shall maintain the same minimum yard setbacks required for principal buildings.
- (6) The minimum gross floor area for an auxiliary dwelling unit shall be three hundred (300) square feet. The maximum gross floor area for an auxiliary dwelling unit shall be no larger than 40% of the gross square footage of the principal residence, but in no case shall exceed 1000 square feet in size.
- (7) Mobile homes and/or manufactured homes shall not be allowed as auxiliary dwelling units. However, see Section 5.09 (E) for Dependent Manufactured Homes, which may allow manufactured homes as a temporary use in some circumstances.
- (8) The owner of the lot on which an auxiliary dwelling unit is located must live on the property in either the auxiliary dwelling or the principal residence as his or her principal place of residence.
- (9) Legal title to the auxiliary dwelling unit and single-family dwelling shall be held in the same name.

Section 5.12 Sign Regulations

(A) Intent

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

(B) Applicability

Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any sign or billboard without first having obtained a Sign Permit issued by the Code Enforcement Officer (CEO) in accordance with the standards of this Zoning Ordinance. All signs shall be considered to be structures. On-premises signs shall be considered to be accessory to the use with which they are associated.

(C) Exempt Signs

The following signs shall be permitted in all zoning districts without a Sign Permit, provided that they are non-illuminated, have no moving parts, and do not include a digital display.

- (1) Signs erected by a governmental entity for a public purpose, and signs posted by duly constituted public authorities in the performance of their public duties.
- (2) Temporary Signs, such as political signs; real estate signs; signs for nonprofit organizations (such as places of worship, schools, scouting organizations, and veterans associations) that advertise banquets, fundraising sales, etc; yard sale signs; and similar signs, whether for commercial, political or private purposes, are permitted without a Sign Permit, provided they comply with the following regulations:
 - (a) No sign shall exceed twenty-four (24) square feet in area, per sign face.
 - (b) No sign shall have more than two sign faces.
 - (c) No sign shall obstruct traffic or interfere with the line of sight of persons or vehicles travelling in a public right-of-way.
 - (d) No sign shall be located in or project into the public right-of-way; no sign shall be located on other public property.
 - (e) The sign is not illuminated.
 - (f) The sign shall not be installed more than six weeks before the event advertised and shall be removed within seven days after the event advertised.

- (3) New business enterprises that are awaiting erection of permanent signs may install temporary signs not exceeding twenty-four (24) square feet for a period not exceeding thirty (30) days.
- (4) Business enterprises which have lost the use by reason of fire or other catastrophe, may install temporary signs not exceeding twenty-four (24) square feet for a period not exceeding thirty (30) days.
- (5) **Nameplate Sign:** One (1) sign indicating the name and address of the occupant and/or otherwise identifying the premises, such as the name of a farm, provided the sign does not exceed eight (8) square feet in area. Such sign shall not project above a roof line. The sign may be attached to a building or may be freestanding. If freestanding, the sign shall be located at least five (5) feet from any property line or right-of-way line.
- (6) One (1) sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies and officials, placed on the premises where construction, repair or renovation is in progress. Such sign shall not exceed twenty-four (24) square feet in sign face area and shall not exceed fifteen (15) feet in height. The sign shall be located a minimum of five (5) feet from any property line or right-of-way line and a minimum of seventy-five (75) feet from any dwelling not within the project. Said sign shall be removed by the owner within thirty (30) days of the completion of the construction, repair or renovation work.
- (7) Memorial signs and historical tablets, provided that such signs do not exceed two (2) square feet in area.
- (8) Cornerstones, foundation stones and similar architectural features, which display the building name and/or date of construction and which are a permanent part of the building.
- (9) A permanent sign painted or lettered directly on a window.
- (10) A sign hung in a window (such as an "open" neon sign), provided the sign is not larger than four (4) square feet or 25 percent of the window area, whichever is less.
- (11) "Posted" signs that are displayed in accordance with NYS Department of Environmental Conservation regulations.
- (12) Agricultural signs

(D) General Standards

All signs shall conform to the standards listed below, unless otherwise stated in this Article.

- (1) Signs shall not be attached directly or indirectly to any light standard, traffic control structure, utility pole or tree.

- (2) No person shall erect or maintain any sign on any property, public or private, without the consent of the owner thereof.
- (3) Signs shall not be placed in or project into a public right-of-way or other public property.
- (4) Signs shall not create a traffic hazard, be unduly distracting to motorists or pedestrians, or reduce the effectiveness of signs needed to direct or ensure the safety of the public.
- (5) Signs shall be installed so that visibility of pedestrians and drivers at driveways and road intersections is not adversely affected. No sign located within a clear sight distance triangle [See Section 5.06(G)] shall obstruct the vision of motorists or pedestrians between a height of 30 inches and 108 inches off the ground.
- (6) If a sign is located in or near a pedestrian walkway, there shall be a minimum clearance of eight (8) feet from the bottom of the sign to the ground, unless the sign is a ground or monument sign that is installed at ground level.
- (7) Streamers, flags or banners shall not be attached to any sign.
- (8) Flashing, moving or animated signs, or signs that create the illusion of movement are prohibited, except for Time and Temperature Signs and except for Electronic Graphic Display Signs that have been approved by the Planning Board.
- (9) ***Illumination***
 - (a) Strobe lights, rotating lights, and/or flashing lights are not permitted as illumination for any sign.
 - (b) Illumination of the sign shall be concentrated upon the sign face and shall be installed so as to prevent glare onto any right-of-way or abutting property.
- (10) Signs using sounds, music, sound effects or other sound or noise-making or transmitting device are not permitted, except for menu boards at drive-through facilities that have been permitted pursuant to this Ordinance.
- (11) ***Maintenance:*** All signs, including their supports, shall be maintained so as to present a neat, clean appearance. Painted area and sign surfaces shall be kept in good condition. Illumination, if provided, shall be maintained in safe working order.
- (12) ***Site Plan Approvals:*** All Site Plans that are approved by the Planning Board shall include a coordinated sign plan for the entire development area. The CEO will issue sign permits only for signs that conform to the approved signage plan.

(E) On-Premises Signs Allowed with a Sign Permit

Schedule C lists on-premises signs that are allowed with a Sign Permit. In order for a Sign Permit to be issued, the sign shall comply with all applicable regulations contained in Schedule C, this Section 5.12 and elsewhere in this Zoning Ordinance.

Key to Schedule C:

P = Permitted with issuance of Sign Permit by CEO

SP= Permitted with Special Use Permit issued by Planning Board in accordance with the procedure in Article VIII of this Zoning Ordinance and a subsequent Sign Permit issued by the CEO in accordance with the Special Use Permit

NP= Not Permitted

Section 5.12 (E): On-Premises Signs Allowed with a Sign Permit - Schedule C

| FREESTANDING SIGNS [Also See Section 5.12(E)(1)] | | | | | | | |
|---|------------|------------|------------|------------|------------|------------|------------|
| Where permitted below, <u>one</u> freestanding sign (either ground, monument, pole or pylon) may be installed per lot. Where more than one enterprise is located on a lot, the sign face area on the freestanding sign may be shared. Where permitted, a freestanding sign is allowed in addition to any allowed wall signs. | | | | | | | |
| | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
| Ground Sign | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |
| Minimum Setback from right-of- way line (feet) | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| Minimum Setback from other property lines (feet) | 5 | 5 | 5 | 5 | 5 | 5 | 5 |
| Illumination | P | P | P | P | P | P | P |
| Monument Sign | | | | | | | |
| Permitted in Zone | NP | P | P | P | P | P | P |
| Minimum Setback from right-of- way line (ft.) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Minimum Setback from other property lines (ft.) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Illumination | - | P | P | P | P | P | P |
| Pole Sign | | | | | | | |
| Permitted in Zone | NP | P | P | P | P | P | P |
| Minimum Setback from right-of- way line (ft.) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Minimum Setback from other property lines (ft.) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Illumination | - | P | P | P | P | P | P |
| Pylon Sign | | | | | | | |
| Permitted in Zone | NP | P | P | P | P | P | P |
| Minimum Setback from right-of- way line (ft.) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Minimum Setback from other property lines (ft.) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Illumination | - | P | P | P | P | P | P |

**Section 5.12 (E): On-Premises Signs Allowed with a Sign Permit - Schedule C
(Continued)**

| SIGNS AFFIXED TO BUILDING WALLS [Also See Section 5.12(E)(2)] | | | | | | | |
|---|------------|--------------------------------|------------|------------|------------|------------|------------------------------|
| The maximum number of signs mounted on, painted on, or otherwise affixed to building walls shall allow a choice among a combination of wall, projecting, awning and/or canopy signs, up to the maximum allowed for each lot and/or establishment. Where there are multiple establishments on one site, such as a shopping plaza or industrial office park, such signage should be uniform in terms of size, shape, colors, materials, placement on the facade, and type of sign, to the maximum extent feasible. | | | | | | | |
| | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
| Maximum number of facades on which signs permitted | 1 | Signs allowed on each frontage | 2 | 2 | 2 | 2 | Signs allowed on all facades |
| Wall Sign | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |
| Projecting Sign | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |
| Awning Sign | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |
| Canopy Sign | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |

**Section 5.12 (E): On-Premises Signs Allowed with a Sign Permit - Schedule C
(Continued)**

| CHANGEABLE SIGNS AND DIGITAL DISPLAYS [Also See Section 5.12(E)(3)] | | | | | | | |
|---|---|------------|------------|------------|------------|------------|------------|
| Where permitted below, one Changeable Copy Sign, Electronic Graphic Display Sign, or Time and Temperature Sign may be incorporated into either a freestanding sign, a wall sign, or a projecting sign. An Electronic Graphic Display Sign may also indicate the time and temperature as part of its display. | | | | | | | |
| | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
| Changeable Copy Sign | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |
| Maximum number permitted per lot | 1 | 1 | 1 | 1 | 1 | 1 | 1 |
| Maximum area (sq. ft.) | 50% of the area of the sign into which the Changeable Copy sign is incorporated. | | | | | | |
| Electronic Graphic Display Sign | | | | | | | |
| Permitted in Zone | NP | SP | SP | SP | SP | SP | SP |
| Maximum number permitted per lot | - | 1 | 1 | 1 | 1 | 1 | 1 |
| Maximum area (sq. ft.) | 50% of the area of the sign into which the Electronic Graphic Display Sign is incorporated. | | | | | | |
| Time and Temperature Sign | | | | | | | |
| Permitted in Zone | NP | P | P | P | P | P | P |
| Maximum number permitted per lot | - | 1 | 1 | 1 | 1 | 1 | 1 |
| Maximum area (sq. ft.) | 50% of the area of the sign into which the Time and Temperature Sign is incorporated. | | | | | | |
| Video Display Sign | | | | | | | |
| Permitted in Zone | NP | NP | NP | NP | NP | NP | NP |

**Section 5.12 (E): On-Premises Signs Allowed with a Sign Permit - Schedule C
(Continued)**

| MISCELLANEOUS SIGNS [Also See Section 5.12(E)(4)] | | | | | | | |
|---|---------------------------|------------|------------|------------|------------|------------|------------|
| | R-1 | A-F | C-1 | C-2 | I-1 | I-2 | C-F |
| Business Identification Signs for Home Occupation and Bed and Breakfast Establishments | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | NP |
| Maximum number permitted | One per lot | | | | | | |
| Maximum area (sq. ft.) | 8 | 8 | 8 | 8 | 8 | 8 | - |
| Maximum height, if freestanding (feet) | 6 | 6 | 6 | 6 | 6 | 6 | |
| Minimum Setback from right-of- way line (feet) | 5 | 5 | 5 | 5 | 5 | 5 | - |
| Minimum Setback from other property lines (ft.) | 5 | 5 | 5 | 5 | 5 | 5 | - |
| Illumination | P | P | P | P | P | P | - |
| Directional Signs | | | | | | | |
| Permitted in Zone | P | P | P | P | P | P | P |
| Maximum area (sq. ft.) | 6 | 6 | 6 | 6 | 6 | 6 | 6 |
| Maximum height (feet) | See Section 5.12(E)(4)(b) | | | | | | |
| Portable Signs | | | | | | | |
| Permitted in Zone | NP | P | P | P | P | P | P |
| Maximum # permitted | One per lot | | | | | | |
| Maximum area (sq. ft.) | - | 40 | 40 | 40 | 40 | 40 | 40 |
| Maximum height (feet) | - | 4 | 4 | 4 | 4 | 4 | 4 |
| Minimum Setback from right-of- way line (feet) | - | 5 | 5 | 5 | 5 | 5 | 5 |
| Minimum Setback from other property lines (ft.) | - | 20 | 20 | 20 | 20 | 20 | 20 |
| Illumination | NP | NP | NP | NP | NP | NP | NP |

- (1) **Freestanding Signs.** There are four types of freestanding signs: Ground Sign, Monument Sign, Pole Sign and Pylon Sign. Where permitted in Schedule C, one on-premises freestanding sign may be allowed per lot. Regulations for the specific sign types are contained below:

(a) *Ground Sign*

- i. A Ground Sign shall not exceed six (6) feet in height.

- ii. A Ground Sign shall not exceed forty (40) square feet in sign area.



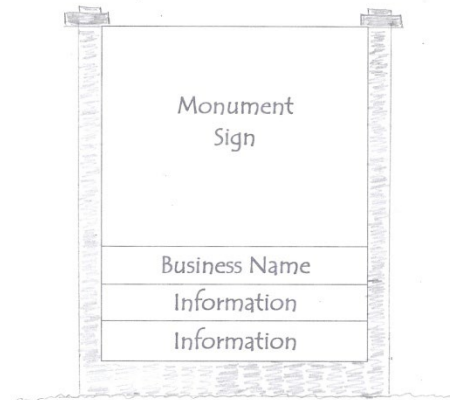
- iii. A Ground Sign shall have a maximum of two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel, and are not more than 24 inches apart.

(b) *Monument Sign*

- i. A Monument Sign shall not exceed 20 feet in height.

- ii. A Monument Sign shall not exceed forty (40) square feet in sign area.

- iii. A Monument Sign shall have a maximum of two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel and are not more than 24 inches apart.

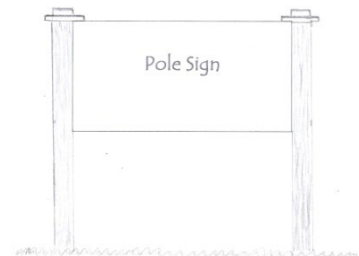


- iv. In addition to the setbacks in Schedule C, the sign shall be located a minimum of 40 feet from any lot in an R-1 Zoning District.

(c) *Pole Sign*

- i. A Pole Sign shall not exceed 20 feet in height.

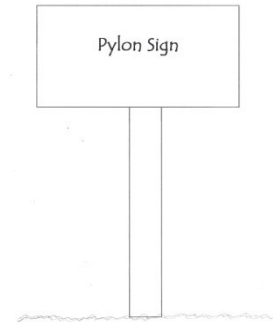
- ii. A Pole Sign shall not exceed 40 square feet in sign area.



- iii. A Pole Sign shall have a maximum of two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel, and not more than 24 inches apart.
- iv. In addition to the setbacks in Schedule C, the supports of such sign shall be located a minimum of 40 feet from any lot in an R-1 Zoning District.
- v. There shall be a minimum of eight feet clearance between the bottom of the sign face and ground level.

(d) *Pylon Sign*

- i. A Pylon Sign shall not exceed 20 feet in height.
- ii. A Pylon Sign shall not exceed 40 square feet in sign area.
- iii. A Pylon Sign shall have a maximum of two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel, and not more than 24 inches apart.
- iv. In addition to the setbacks in Schedule C, the support of such sign shall be located a minimum of 40 feet from any lot in an R-1 Zoning District.
- v. There shall be a minimum of eight feet clearance between the bottom of the sign face and ground level.



(2) ***Signs Affixed to Building Walls.*** There are four types of signs that may be affixed to building walls: Wall Signs, Projecting Signs, Awning Signs, and Canopy Signs. Where permitted in Schedule C, any allowable sign area may be shared among these sign types. Signs shall conform to the specific regulations for each sign type, below.

(a) *Calculation of allowable sign area.* Signs may be placed on any building facade, up to the maximum number of facades allowed in Schedule C. The maximum allowable sign area for each facade shall be based on the area of the Building Face, as described below. The allowable sign area for each facade may be used for one sign, or may be split among two or more signs on the facade, provided that the maximum allowable sign area per facade is not exceeded.

Where more than one enterprise occupies a building, for example in a shopping plaza, the allowable sign area for each enterprise shall be calculated based upon the Building Face Area occupied by that enterprise.

The maximum allowable sign area shall be calculated as a percentage of the Building Face Area. Building Face Area shall be the exposed area (length times

height) of the building wall upon which the sign will be displayed. Allowable sign area is computed as follows:

- i. Facades with a building face of 2,000 square feet or less: Maximum allowable sign area is eight percent (8%) of the building face area.
- ii. Facades with a building face over 2,000 square feet: Maximum allowable sign area is five percent (5%) of the building face area or 250 square feet, whichever is less.
- iii. Buildings or shopping plazas with a **gross floor area** of 100,000 square feet or more: Maximum allowable sign area is five percent (5%) of the building face area or 350 square feet, whichever is less.

(b) *Wall Signs*

- i. No wall sign shall extend above the top or over the side of the building.
- ii. A wall sign shall have only one sign face.
- iii. No wall sign shall cover or block, either wholly or partially, any window, door or fire escape.

(c) *Projecting Signs*

- i. The lowest point of a projecting sign shall be a minimum of eight (8) feet above ground level.
- ii. The distance between the nearest edge of the sign and the building wall to which it is attached may not exceed three feet.
- iii. A projecting sign shall have a maximum of two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel, and not more than 24 inches apart.

(d) *Awning and Canopy signs*

- i. The lowest point of an awning or canopy sign shall be a minimum of eight (8) feet above ground level.
- ii. Signs shall be permanently attached to the awning or canopy, or shall be an integral part of the awning or canopy.

(3) *Changeable Signs and Digital Displays*

(a) *Changeable Copy Signs*

- i. A double-faced changeable copy sign shall be considered to be one sign, provided the sign faces are parallel and not more than 24 inches apart.
- ii. A changeable copy sign shall not change more frequently than every 20 minutes.

- iii. A changeable copy sign shall not have any animated or moving components.

(b) *Time and Temperature Signs*

- i. A double faced sign shall be considered to be one sign, provided the sign faces are parallel and not more than 24 inches apart.
- ii. The sign may not have any other animated or moving components, other than the date, time and temperature.
- iii. A sign with a Time and Temperature display shall not also contain an Electronic Graphic Display Sign, unless the Time and Temperature display is part of the messages shown on the Electronic Graphic Display Sign.

(c) *Electronic Graphic Display Signs*

- i. Where permitted in Schedule C, Electronic Graphic Display Signs may be permitted with a Special Use Permit issued by the Planning Board, pursuant to the regulations of Article VIII of this Zoning Ordinance.
- ii. Only one Electronic Graphic Display Sign shall be permitted per lot. A double-faced sign shall be considered to be one sign, provided the sign faces are parallel and not more than 24 inches apart.
- iii. The display time for an image or message shall be a minimum of eight (8) seconds, before changing to another image or message.
- iv. The transition time between messages/images shall be one second. Changes between messages may be accomplished through dissolve or fade transitions, but shall not exceed one second of time between each message displayed on the sign.
- v. The sign shall contain static messages and images only. The use of streaming video, full-motion or intermittent video, flashing, scrolling, or animation is prohibited.
- vi. The sign shall be equipped with a default mechanism that shall freeze the sign in one position as a static message, if a malfunction occurs.
- vii. The brightness of the sign shall not exceed a maximum illumination of five thousand (5,000) nits during daylight hours or a maximum illumination of five hundred 500 nits between one-half hour before sunset to one-half hour after sunrise, as measured at the sign face's point of maximum brightness. The sign shall be equipped with an automatic dimmer control to accomplish this.

- viii. The illumination level shall not produce a glare which constitutes a traffic hazard.
 - ix. An Electronic Graphic Display Sign shall be set back a minimum of 100 feet from the R-1 Zoning District.
 - x. An Electronic Graphic Display Sign shall be a minimum of 35 feet from any other Electronic Graphic Display Sign.
- (d) *Video Display Signs.* Video Display Signs are not permitted in the Town of Allegany.

(4) ***Miscellaneous Signs***

(a) *Business Identification Signs for Home Occupations and Bed and Breakfast Establishments*

- i. Each Home Occupation and Bed and Breakfast Establishment may display one sign identifying the business. The sign may be either affixed to the wall of the building in which the business is located (wall sign, projecting sign, canopy sign or awning sign), or may be a freestanding sign.
- ii. If a freestanding sign is installed, it shall not have more than two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel, and not more than 24 inches apart.
- iii. The sign may be illuminated, provided that the lighting does not glare onto abutting properties or the right-of-way.
- iv. An Electronic Graphic Display Sign is not permitted.

(b) *Directional Signs*

- i. Directional signs may be installed to direct vehicular and pedestrian traffic flow into and within a parcel.
- ii. There is no limit on the number of directional signs that can be installed, but the number installed shall be the minimum needed to adequately direct pedestrians and vehicles, without clutter. No more than two directional signs shall be installed at each driveway entrance.
- iii. Signage at driveway entrances shall not block views from the right-of-way for pedestrians and vehicles. Signs at driveway entrances shall not exceed four (4) feet in height, and shall be located such that they do not pose a safety hazard for pedestrians.

- iv. Interior directional signage within a site may not exceed 12 feet in height. If signs are at the maximum height, there shall be a minimum clearance of eight (8) feet clearance between the bottom of the sign and the ground. The Code Enforcement Officer may permit signs with a lesser clearance distance upon a determination that the location of the signs will not present a hazard to pedestrians or block views for drivers.
- v. There is no minimum required setback for a directional sign; however, such sign shall not project into any right-of-way or any abutting property.
- vi. Directional signs in the Community Facilities District that are more than one hundred (100) feet from Route 417 are exempt from these directional signage regulations.

(c) *Portable Signs*

- i. Portable signs shall be no larger than forty (40) square feet in area.
- ii. No flashing lights, streamers or animated or fluttering lights are permitted.
- iii. Portable signs must comply with the clear sight distance provisions contained in Section 5.06(G) of this Ordinance.

(F) Off-Premises Signs

Where permitted in Section 4.02, District Use Regulations, Schedule A, off-premises signs shall comply with the following standards.

(1) *Outdoor Advertising Signs*

- (a) An outdoor advertising sign shall not contain more than two (2) faces.
- (b) An outdoor advertising sign shall not be higher than 20 feet.
- (c) An outdoor advertising sign shall not be greater than 40 square feet in sign area.
- (d) An outdoor advertising sign shall be set back a minimum of five (5) feet from any right-of-way line and from any other property line.
- (e) An Electronic Graphic Display Sign is not permitted.

(2) *Billboards*

- (a) A billboard shall not contain more than two (2) faces.

- (b) An individual sign face shall not exceed twelve (12) feet in height by twenty-five (25) feet in length [300 square feet in sign area].
 - (c) A billboard shall not exceed thirty (30) feet in height above the average finished grade nor shall the lowest horizontal member, excluding the pole, be less than eight (8) feet from the average finished grade of a paved walk, drive or parking area on which it is located.
 - (d) A billboard may not be erected within one thousand (1,000) feet from any other existing billboard.
 - (e) A billboard shall not be located closer than twenty (20) feet to any street right-of-way.
 - (f) A billboard shall not be located within three hundred (300) feet of an R-1 Zoning District.
 - (g) An Electronic Graphic Display Sign may be permitted with special use permit approval from the Planning Board. For billboards, the Electronic Graphic Display may constitute 100% of the sign area.
- (3) Billboards and Outdoor Advertising Signs are not permitted in the Route 417 East Corridor Overlay District (CO-1) or in the Route 417 West Corridor Overlay District (CO-2). See Section 4.13(E)(10) and Section 4.14(E)(11).

(G) Sign Permit Process

- (1) An application for a sign permit shall be made to the Code Enforcement Officer (CEO). The application shall include the following information:
 - (a) Name, address and telephone number of the applicant.
 - (b) Name, address and telephone number of the owner of the property, if different than the applicant.
 - (c) Location of the building, structure or land upon which the sign is to be erected.
 - (d) Elevation and plan drawings of the proposed sign shall be provided. This shall include a full description of the placement of the proposed sign, showing its location on the premises, specifically in relation to buildings, structures and property lines.
 - (e) Description of the proposed sign. The description should include the colors and materials of the sign; the graphic design, including symbols and letters; the text, copy and/or content of the sign; and the dimensions of the sign, including the area of the sign face and the height of the sign.

- (f) The method of illumination, if any, and the position of lighting.
 - (g) Written consent of the owner, or a copy of the contract made with the owner of the property upon which the sign is to be erected, if the applicant is not the owner.
 - (h) The required application fee, if any.
- (2) The CEO will make a decision on the application within 30 days of receipt of a complete application.
- (a) If the CEO determines that the application meets the standards in this section, a sign permit will be issued.
 - (b) If the CEO determines that the application requires a Special Use Permit, he/she will forward the application to the Planning Board, who shall review the application in accordance with the provisions of Article VIII of this Ordinance.
 - (c) If the CEO denies the application for sign permit, the reasons for denial will be provided in writing.

(H) Obsolete Signs

When an on-premises sign has become obsolete for any reason, including the discontinuance of the business, service, or activity which it advertises, the sign shall be removed within 30 days from the discontinuance of the business or other activity.

(I) Measurement Rules

- (1) The height of the sign shall be computed as the vertical distance measured from the base of the sign at finished grade to the top of the highest attached component of the sign.
- (2) The sign area for a double-faced sign shall be the area of one face only.
- (3) Where there is no geometric frame or edge of the sign, the sign area shall be defined by a projected, enclosed, four-sided geometric shape which most closely parallels the outline of said sign.
- (4) For ground and monument signs, the sign area shall not include the supporting framework, such as stone walls, etc.

Section 5.13 Off-Street Parking and Loading Regulations

(A) Applicability

Except as may be provided elsewhere in this Ordinance, any time a new building is constructed or any time any principal building or land use is enlarged or increased in capacity, off-street parking and/or loading spaces shall be provided as required by this Section. If any land or structure is changed from one use to another use which requires more off-street parking and/or loading spaces, such additional parking and loading spaces shall be provided.

(B) Parking Standards

- (1) Each off-street parking space shall have a size of not less than 9.5 feet wide by 18 feet long, exclusive of access driveways and/or aisles. Drive aisles in parking lots shall be a minimum of 25 feet wide.
- (2) Each parking space shall be independently accessible, except that tandem parking may be allowed for single family and two-family dwellings. Where tandem parking is provided, the space shall be long enough so that the vehicle does not encroach into the sidewalk and/or right-of-way.
- (3) In general, parking spaces should be oriented at 90 degrees from the drive aisles, since this configuration maximizes the efficient use of space. However, during site plan review, the Planning Board may approve angled parking as a component of a project, when site constraints limit the siting of double-loaded, 90 degree parking spaces. In general, parking lots with angled parking should have one-way drive aisles. If angled parking is approved, the required minimum width of the drive aisle may be reduced, upon the applicant's demonstration that the reduced width can adequately provide vehicular maneuvering space within the parking lot and that safety is not compromised by the reduction in aisle width.
- (4) Areas used for parking shall have a surface adequate for the anticipated loading and soil conditions. Parking lots designed to serve four or more vehicles shall be hard surfaced (i.e. a minimum of oil and chip surface). The Planning Board may waive the requirement for hard surfacing of the lot, upon the recommendation of the Town Engineer, where unusual circumstances so warrant. Such circumstances include an anticipated low volume of users. The use of pervious hard surfaces to provide a reduction in stormwater runoff is encouraged.
- (5) Parking lots shall be designed to provide adequate, unobstructed access to a public or private street. The access driveways for commercial and industrial uses shall be a minimum of 24 feet wide. The access driveways for townhouse and multiple family developments shall be a minimum of 18 feet wide. However, the Planning Board may reduce this requirement during site plan review, depending upon site specific

considerations, such as one way loops, provided that safety and convenience to pedestrians and drivers are not compromised.

(C) Off-Street Parking Requirements

- (1) Required off-street parking shall be provided on the same lot as the use that it serves or on a lot under the same ownership or control. Where a development comprises more than one type of land use, the parking requirement shall be totaled for all components of the project. However, the Planning Board may reduce the total parking requirement if the project proponent satisfactorily demonstrates that shared parking will occur among the project components, based upon a shared parking analysis prepared by a traffic engineer or other qualified professional.
- (2) The minimum number of off-street parking spaces to be provided is shown on Schedule D. Where a land use is not listed on Schedule D, the parking requirement shall be determined by the Planning Board in consultation with town staff and/or other experts.
- (3) Where the required number of parking spaces is calculated as a fraction of a space, fractions less than 0.5 shall be rounded down. Fractions of 0.5 and higher shall be rounded up to require an additional parking space.
- (4) Electric vehicle charging station parking spaces shall be allowed to be used in the computation of required off-street parking spaces. The charging station shall be located such that it does not obstruct any vehicular or pedestrian traffic, either on-site or off-site.

(D) Loading Areas

- (1) Every building with a gross floor area of 10,000 to 99,999 square feet that requires the loading or unloading of trucks shall provide and maintain at least one off-street loading space. Buildings that are 100,00 square feet or larger shall provide one additional space for each additional 100,000 square feet of gross floor area or fraction thereof.
- (2) Each loading space shall be not less than 10 feet in width and 25 feet in length.
- (3) Loading spaces shall be designed so that goods and products are not unloaded in a public street, off-street parking area or front yard.
- (4) Loading spaces shall be designed so that vehicles do not need to back out onto any public right-of-way.

Section 5.13 (C): Off-Street Parking Requirements - Schedule D

| LAND USE | PARKING SPACES REQUIRED |
|---|--|
| Detached Single-family Dwelling Two-family Dwelling Seasonal Dwelling | 2 spaces per dwelling unit |
| Townhouses Attached Single-family dwellings Multiple-family dwellings | Based on the number of bedrooms: Studio and One-bedroom: 1 space/unit Two-bedroom: 1.5 spaces/unit Three bedroom: 2 spaces/unit Four or more bedrooms: 1 space/bedroom |
| Bed & Breakfast Establishment Boarding House | One space per room rented, plus required spaces for Primary residence |
| Auxiliary Dwelling Unit | See Section 5.11 |
| Hotels, motels & inns | One space per rental unit |
| Churches and Places of Worship | One space for every four seats in principal gathering room |
| Restaurant Theater, Indoor and Cineplex | One space for every four seats, plus employee parking |
| Golf course | Four spaces for each hole |
| Bowling alley | Five spaces for each lane |
| Commercial Recreation facility, not otherwise listed in Schedule D. | As determined by the Planning Board, based on capacity and location of the facility, taking into account transportation services and pedestrian access. |
| Club Bar and Tavern | One space for each 5 seats, plus 1 space for each 100 square feet of assembly area not having fixed seats. |
| Offices Medical clinic Personal Service Establishment | One space for every 300 square feet of gross floor area |

| LAND USE | PARKING SPACES REQUIRED |
|--|---|
| Retail Use and Local Commercial Establishment up to 20,000 Square feet | One space for each 200 square feet of gross floor area. |
| Retail Use, Shopping Plaza, and Local Commercial Establishment over 20,000 but less than 200,000 square feet | One space for each 250 square feet of gross floor area |
| Retail Use or Shopping Plaza with 200,000 square feet and more | One space for each 300 square feet of gross floor area |
| Building Supply Store | One space for each 1000 square feet of gross floor area |
| Manufacturing Wholesale Establishment Warehouse | One space for each two employees on the maximum working shift |
| Long Term Care Facility | One for every three beds, plus one for each employee on the maximum working shift |
| Funeral home | One space for each 75 square feet of floor area in parlors and assembly areas. |

Section 5.14 Landscaping Regulations

(A) Intent. The purposes and intent of this Section are:

- (1) To conserve and stabilize property values and to otherwise facilitate the creation of a convenient, attractive and harmonious community, and a healthful and pleasant environment by requiring the landscaping of all developments, including off-street parking and loading areas.
- (2) To establish minimum standards and criteria for the landscaping of all nonresidential developments, to prevent the unnecessary clearing and disturbing of land and trees, to preserve the natural and existing growth of flora, and to replace removed flora or place new flora indigenous to the Western New York region.
- (3) To relieve the stark, congested and paved appearance of commercial and industrial areas, and reduce the effects of traffic noise and glare.
- (4) To provide unpaved areas for the absorption of surface waters and to prevent soil erosion.

- (5) To reduce the level of carbon dioxide and return pure oxygen to the atmosphere.

(B) Applicability of Landscaping Requirements

The provisions of this Section are applicable to every new development or redevelopment that requires Special Use Permit, Site Plan Review or other discretionary permit from the Planning Board, except for single family and two-family dwellings.

(C) Standards

- (1) A landscape plan shall be submitted and approved as a part of Site Plan review procedures. The landscape plan shall be drawn to scale, including dimensions and distances, and shall clearly delineate existing and proposed structures, uses, parking area, access aisles, drainage pattern and the location, size and description of all landscape materials existing and proposed, including all trees and shrubs, and including those existing plant materials that are to be removed and such other information as may be required by the Planning Board.
- (2) Natural site features and vegetation shall be preserved and integrated into the proposed site development wherever possible.
- (3) All exterior developed areas of any site not required for parking, accessory structures, access, etc, shall be landscaped. Suitable trees and shrubs shall be provided along all walks and streets, parking areas, around recreation areas, and along the outer property line of the site. All new trees shall have a minimum three (3) inches of caliper measured six (6) inches above the ground. Vegetation shall be appropriate and compatible with soil and growing conditions on the development site and with the regional climate.
- (4) The Planning Board may require any unenclosed accessory use such as loading or service area; trash collection area, litter receptacles or dumpsters; or similar use or activity, which is visible from a public or private right-of-way or abutting property, to be screened with fencing and/or landscaping that is sufficient to obscure such uses from view from abutting properties or rights-of-way.
- (5) For the purpose of screening, where a use in a nonresidential zoning district abuts a residential zoning district, the Planning Board may require fences, vegetation or other appropriate material in the nonresidential districts, sufficient to assure privacy for adjacent residential land uses, taking into account visual, noise and air quality considerations.

(D) Fencing

- (1) A fence or wall in a C-1, C-2, I-1 or I-2 District shall not exceed six (6) feet in height, except where it abuts a nonresidential district, in which event it shall not exceed eight

(8) feet in height. The height of all fences and walls shall be measured from the average finished grade of the lot.

(2) Fencing shall not interfere with emergency vehicular access to a building or site.

(3) All fences shall be maintained structurally and visually.

(E) Outdoor Storage

Where this Ordinance permits outdoor storage of materials and products, the Planning Board may require such areas to be screened from view from abutting parcels, public streets, and adjacent off-street parking areas, through the use of fencing, landscaping, and/or other means. Also see Section 5.15, Performance Standards.

Section 5.15 Performance Standards for Commercial and Industrial Uses

(A) Intent

In order to protect the health, safety and welfare of the residents of the Town of Allegany, all commercial and industrial uses that are permitted in Section 4.02, whether as a special permitted use or a permitted use, shall be conducted in such a manner so as to not create any dangerous, injurious, or noxious effect. To accomplish this, all commercial and industrial land uses shall conform to the performance standards in this Section. Pursuant to Cattaraugus County's Right-To-Farm Law, these standards shall not apply to agricultural uses that follow "generally accepted agricultural practices," as defined in that Law.

(B) Performance Standards

All commercial and industrial uses in any district, including Home Occupations, shall comply with the following performance standards:

- (1) **Odor:** The facility shall not emit any offensive odors, discernible at the property line, that constitute a public nuisance for abutters or other off-site property.
- (2) **Dust:** The facility shall be operated in such a manner so as to minimize the deposit of dust on abutting properties and rights-of-way, to the maximum extent feasible.
- (3) **Fire Hazard:** Any activity involving the use or storage of flammable or explosive materials shall be protected by adequate fire fighting and suppression equipment.
- (4) **Site Lighting:** Lighting from parking lots, building facade lighting or other site lighting shall not substantially spill over onto adjacent properties. The Town encourages the use of cut-off light fixtures which focus light downward, not up toward the sky, for parking lot lighting.

- (5) **Noise:** Noise emitted by the facility shall comply with Local Law 1 of 2005, the Town of Allegany Noise Law.
- (6) **Traffic:** No facility shall generate traffic levels beyond the capacity of the roadway on which the establishment will be located, or on other local area roadways.
- (7) **Buffer yard:** When a buffer yard is required by Section 5.06(D) of this Ordinance, the Planning Board may require the buffer yard to contain fencing, landscaping, berms and/or other means of buffering the commercial or industrial use from the abutting residential use. The purpose of the buffer yard is to reduce noise, dust, visual and other impacts to the residential use; buffering and screening features shall be adequate to accomplish this. Any buffer yard features that are required by the Planning Board shall be shown on the approved site plan. Approved buffer yard features shall be installed within one year of the completion of the building/structure. Size of plants shall comply with the standards in Section 5.14, Landscaping, of this Ordinance. The property owner shall be responsible for the continuous maintenance and replacement of all landscaping features.
- (8) **Outdoor Storage:** The Planning Board may require any outdoor storage of materials or products, if permitted, to be shielded from view from public streets and adjacent non-industrial or non-commercial land uses by fencing, landscaping and/or other appropriate measures.
- (9) **Garbage dumpsters and refuse containers:**
 - (a) All dumpsters and other refuse containers shall be constructed and maintained in such a manner so as to discourage rodents, raccoons, bear, etc.
 - (b) The Planning Board may require garbage dumpsters and/or other refuse areas to be screened from view from adjacent roads and abutting properties by a solid fenced enclosure, berms, landscaping and/or other means.
 - (c) The Planning Board may require garbage dumpsters and/or other refuse containers to be placed on a concrete pad.

Section 5.16 Sanitation

The dumping of garbage or rubbish shall only be permitted in locations and under conditions approved by the Town of Allegany and the Cattaraugus County Department of Health. Careful consideration shall be given to the location and construction of private water supplies to assure adequate protection of such supplies.

Section 5.17 Junkyards and Storage of Junk

(A) Intent and Purpose

A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Town of Allegany and the safe-guarding of their material rights against unwarrantable invasion and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the Town and the general welfare of its citizens. It is further declared that the unrestrained accumulation of junk is a hazard to the health, safety and welfare of the citizens of the Town, necessitating the regulation, restraint and elimination thereof. At the same time, it is recognized that the maintenance of junkyards as defined in this Ordinance, is a useful and necessary business when not in conflict with the express purposes of this section and when proper controls are in place to protect the community from health and safety hazards, noise and other nuisances.

(B) Outdoor Storage of Junk

The outdoor storage of junk, without first having obtained a permit to operate a Junkyard pursuant to these regulations, is prohibited. Such outdoor storage of junk shall be a violation of this Zoning Ordinance.

(C) Junkyards

(1) Special Use Permit Required

Where permitted in Section 4.02, District Use Regulations, Schedule A, a junkyard may be permitted upon the granting of a Special Use Permit by the Town of Allegany Planning Board, in accordance with the procedures in Article VIII of this Zoning Ordinance and the approval by the Planning Board of a Site Plan in accordance with the procedures of Article IX of this Ordinance. All junkyards shall conform to the requirements of this Section and to all other applicable regulations of this Ordinance. A Special Use Permit shall be valid for a period of two (2) years, and may be renewed by the Planning Board following the procedure in Article VIII of this Ordinance.

(2) Application Requirements

In addition to the information required in Articles VIII and IX for applications, all applications for a junkyard shall include the following:

- (a)** The type of materials to be stored or deposited in the junkyard.
- (b)** A Fire Safety Access Plan, which shall provide for fire lanes within the Junk Storage Area at appropriate intervals, in order to facilitate access by fire apparatus. The Fire Department having jurisdiction, or its designee, shall review the draft Fire Safety Access Plan and may propose modifications to the Plan.

The Fire Department shall provide a report and recommendation to the Planning Board, prior to the Board's action on the application.

- (c) A statement as to whether or not the applicant has been convicted of larceny or knowingly receiving stolen property, any violation of any municipal ordinance, any violation of Article 6 of the General Business Law, or any violation of Section 136 of General Municipal Law.
 - (d) The location of all water supply wells on the property and/or within 100 feet of the proposed Junk Storage Area.
- (3) **Findings:** In addition to the standards for approval in Article VIII and Article IX of this Zoning Ordinance, the Planning Board shall also take the following factors into consideration when determining whether to grant or deny the Special Use Permit for a junkyard:
- (a) The type of road servicing the junk yard or from which the junkyard can be seen.
 - (b) Natural or artificial barriers protecting the junk yard from view.
 - (c) Proximity of the site to established residential or recreational areas or main access routes thereto.
 - (d) The nature and development of surrounding property.
 - (e) Whether or not the proposed location will affect the public health and safety by reason of offensive or unhealthy noise, odors or smoke, or of other causes.
 - (f) The availability of municipal fire protection and the adequacy of the water supply for fire protection purposes.
 - (g) The type of junk to be stored or deposited in the junk yard.
 - (h) The reasonable availability of other suitable sites for the junkyard.
 - (i) Suitability of the applicant to comply with the regulations and standards of this Ordinance, including any record the applicant has of convictions for larceny or receiving stolen property; and
 - (j) Compliance with the standards of this Ordinance.
- (4) **Standards.** All junkyards shall comply with the following standards and requirements:
- (a) The holder of the Special Use Permit (the permittee) shall personally manage or be responsible for the management of the business.
 - (b) The permittee shall maintain an office and a sufficient number of employees on the premises to assure proper and safe conduct of the business, to minimize the fire hazard therefrom and to prevent improper trespass by children and others.
 - (c) The Junk Storage Area shall be designed to be as compact as possible. A junkyard shall not have more than one Junk Storage Area.
 - (d) No Junk Storage Area shall be located within 500 feet of the following:

- i. Any stream, lake pond, wetland, or other body of water
 - ii. Any place of worship, school, college, hospital, or public park
- (e) No Junk Storage Area shall be located within 150 feet of the following:
 - i. Any adjoining property line
 - ii. The right-of-way line of any public highway
- (f) The ingress/egress for the Junkyard and Junk Storage Area shall be of a width and location acceptable to the Highway Department having jurisdiction over the road.
- (g) *Fencing:* A fence that is not less than eight feet high shall enclose the entire Junk Storage Area. The fence shall be adequate to prevent the entrance by children and others into the Junk Storage Area. All materials and operations of the junkyard shall be contained within the fenced area at all times. Where a junkyard is visible from a public highway or from neighboring properties, a solid fence that completely screens the junkyard from view from those roadways and/or properties shall be constructed. The fence shall be maintained in good condition at all times. If existing trees or other vegetation, or the topography, on the same site as the junkyard, is adequate to screen the property from view, the requirement for solid fencing may be waived by the Planning Board. However, fencing for safety shall continue to be required. The Planning Board may require planting of evergreen trees and/or shrubbery to provide additional screening, in addition to the required fence. If trees or other plantings are designated to serve as screening or are otherwise required by the Planning Board, such plantings shall be maintained in good condition. If the trees or plants die, they shall be replaced with the same or similar species.
- (h) The fence shall contain a locking gate that is adequate to prohibit the entrance of children and others into the Junk Storage Area. When the Junk Storage Area is not supervised by the permittee or his employees, the gate shall be closed and locked.
- (i) *Fire Safety:* Inside and contiguous to such fence a strip of land a minimum of 10 feet wide shall be kept free of all dry grass or other growth or combustible materials, so as to provide a fire lane or line around the entire area where the business is being conducted.
- (j) Materials shall be stored in neat rows, in order to facilitate easy passage within the Junk Storage Area and to facilitate access by fire fighters, if necessary. Storage of materials shall comply with the location of any fire lanes that are shown on the approved Fire Safety Access Plan.
- (k) No materials shall be burned or buried in a junkyard except in compliance with Article 27 of the Environmental Conservation Law of the State of New York.

- (l) A junkyard shall not contain more than 100 waste tires that are not attached to a vehicle. The term “waste tire” shall mean whole tires or portions of tires.
 - (m) Lead acid batteries shall not be stored on the ground. All lead acid batteries shall be covered by a tarp or other means in a manner that severely restricts water from coming into contact with the lead acid battery. Leaking batteries shall be stored in a leak-proof container separately from intact lead acid batteries and provisions shall be in place to absorb any leakage.
 - (n) Any fluids recovered from junk vehicles shall be stored in leak-proof containers and disposed of properly. Such fluids shall not be intentionally released on the ground or to surface water.
- (5) If the junkyard will deal in junked automobiles, the permittee may also need to obtain a dismantler's permit from New York State.

Section 5.18 Subsurface Rights

This Ordinance shall not abrogate or restrict any subsurface rights acquired by deed or lease, but all surface or above-surface structures, exclusive of crude oil and natural gas production facilities in conjunction therewith, shall be subject to the regulations hereby established. See Section 5.19 for oil and gas production facilities.

Section 5.19 Oil and Gas Production Facilities

The drilling, operation and use of oil and gas production facilities, including wells, structures and equipment integral to these activities, is regulated by the New York State Department of Environmental Conservation under New York State Environmental Conservation Law. Applicants for these activities must consult with the Division of Mineral Resources of the New York State Department of Environmental Conservation.

Section 5.20 Mining

Where permitted in Section 4.02, District Use Regulations, Schedule A, of this Ordinance, all mining, including quarrying, removal of topsoil, and sand and gravel extraction, shall conform to the requirements in this Section.

(A) Special Use Permit Required

Prior to commencing any mining operation, whether commercial or incidental, the project proponent shall apply for and receive a Special Use Permit from the Town of Allegany Planning Board, pursuant to the procedures in Article VIII of this Zoning Ordinance.

(B) Application Requirements

In addition to the requirements listed in Article VIII, the Special Use Permit application shall include the following:

- (1) The proposed methods for preventing water, air and noise pollution, reducing soil erosion and minimizing the effects of mining on adjacent landowners. The Planning Board will not issue the Special Use Permit if the Board determines that the proposed measures are inadequate to minimize adverse effects on adjacent property and cannot be revised through conditions to adequately mitigate the adverse effects.
- (2) A plan of the mining operation.
- (3) A Reclamation Plan for the site, including final grading. A proposed or approved New York State Department of Environmental Conservation Mining and Reclamation Plan may be substituted for this requirement.

(C) Standards

All mining activities shall be conducted according to the following standards:

- (1) The permittee shall personally manage, or be responsible for the management of, the activity or business for which the permit is granted.
- (2) No mining or stockpiling shall take place closer than 500 feet from any inhabited dwelling in existence when the Special Use Permit is issued, or 100 feet from any adjoining property line, except with the written consent of said property owners.
- (3) Mining shall not diminish, pollute, or otherwise affect private wells that supply water to residences and other properties in existence when the Special Use Permit is issued.
- (4) The slope of mining operations shall meet current NYS Department of Environmental Conservation standards, whether or not a NYSDEC Mined Land Permit is required. Care shall be taken such that operations and final grade do not pose a safety hazard. Excavation operations shall be conducted to minimize erosion.
- (5) During mining operations the permittee shall be responsible for securing the site from public access.

(D) Site Reclamation

- (1) The permittee shall reclaim all affected areas within one year of the cessation of mining activities or within one year of the expiration of the Town's Special Use Permit and/or Mined Land Permit issued by NYSDEC, if said permit is not renewed.

- (2) After the approval of the Special Use Permit, but before the start of mining activities, the permittee shall execute and file with the Town Clerk, a performance bond, cash deposit, or other security acceptable to the Town Board of the Town of Allegany in an amount to be fixed by the Town Board, upon a recommendation by the Planning Board. Said bond shall remain in full force and effect until a certificate of completion has been issued by the Town Board. If the permittee has obtained a Mined Land Permit from NYSDEC, the Town's bonding requirements shall be waived.

(E) Exemption

Nothing contained in this Ordinance shall require a person to obtain a permit to move topsoil, sand, gravel, or subsoil from part of his lands to another part of the same premises.

Section 5.21 Adult Uses

(A) Intent and Purpose

The intent and purpose of this section is to establish regulations for Adult Uses. The Town of Allegany recognizes there are potential detrimental effects to the Town if adult uses were to be established, without regulation, in close proximity to certain sensitive land uses in the town.

Adult uses, due to their nature, have serious objectionable characteristics that can have a significant impact on the neighborhood and community in which they are located. The objectionable characteristics of these uses are further heightened by their concentration in any one area thereby having deleterious effects on adjacent areas. The uncontrolled proliferation of such uses would be inconsistent with the Town's character as a primarily residential and family-oriented community. Adult uses can contribute to the blighting or downgrading of areas in which they are located, as a result of their related potential for an increase in crime and the undermining of the economic and social welfare of the community. The special regulations deemed necessary to control the undesirable secondary effects arising from adult uses are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of the Town and to protect the public health, safety and welfare. The provisions of this section have neither the purpose nor the effect of imposing a limitation or restriction on the contact of any communicative materials, or to deny access by adults to adult materials.

(B) Special Use Permit Required

No Adult Use shall be established in the Town of Allegany except upon the granting of a Special Use Permit by the Town of Allegany Planning Board, in accordance with the procedures in Article VIII of this Zoning Ordinance. Adult Uses shall only be allowable in the zoning district(s) identified in Section 4.02, Schedule A, District Use Regulations.

(C) Regulations

The following provisions shall apply to all adult uses:

(1) Location and Separation Distances

- (a) No adult use shall be located within one thousand feet of any residential use, measured in a straight line without regard to intervening structures or objects from the closest exterior structural wall of such adult use to the closest exterior building wall of the residential building.
- (b) No adult use shall be located within one thousand feet of a school, nursery school, child day care center, college, place of worship, religious institution, park, library, campground, historic resource, scenic resource, civic facility, cultural facility, or commercial recreation facility (such as a for-profit park, snow tubing facility, golf course, or similar commercial recreational facility that minors may use). For measurement purpose, the distance between an adult use and any such other named uses shall be measured in a straight line without regard to intervening structures or objects from the closest exterior structural wall of such adult use to the lot line of such school, nursery school, religious institution, place of worship, etc.
- (c) No adult use shall be located within three hundred feet of any recreational trail, measured in a straight line without regard to intervening structures or objects from the closest exterior structural wall of such adult use to the easement line of the trail.
- (d) No more than one adult use shall be located in the same building or upon the same lot or parcel of land.
- (e) No adult use shall be located within a one thousand foot radius of another adult use.
- (f) No adult use shall be located in any building that is used in whole or in part for residential use.

(2) Standards for adult uses

- (a) All building openings, including doors and windows, shall be covered or screened in such a manner as to prevent a view into the establishment from any public street, sidewalk or parking area.
- (b) No loudspeakers or sound equipment shall be used by adult uses that can be heard by the public from outside the establishment.

- (c) All adult uses shall be conducted in an enclosed building. There shall be no outdoor display of merchandise.
- (d) As a condition of approval of any adult use, there shall be a restriction that no person under the age of eighteen (18) years shall be permitted into or on the premises.

(3) Signage

In addition to the sign requirements of Section 5.12, the following provisions shall apply to signs erected or maintained in connection with an adult use.

- (a) Advertisements, displays or promotional material shall not be shown or exhibited so as to be visible to the public from public roads, sidewalks or walkways or from other public or semipublic areas.
- (b) For any adult use, only one wall sign, limited to the name of the establishment, shall be permitted. No pole, ground or freestanding sign shall be permitted. In addition, one sign giving notice that the premises are off-limits to minors shall be allowed.
- (c) Signage shall be reviewed by the Planning Board in conjunction with the Special Use application and shall conform to all signage requirements of this section as well as Section 5.12 of this Ordinance.

(D) Other provisions

The restrictions set forth in this section are in addition to any other applicable provision of this Ordinance. In the event of any conflict between any such provisions, the more restrictive shall apply.

Section 5.22 Telecommunications Facilities

(A) Intent

The Town of Allegany recognizes the increased demand for wireless communication transmitting facilities and the need for the services they provide. Often, these facilities require the construction of a communications tower and/or similar facilities. The intent of this section is to regulate telecommunication facilities in accordance with the provisions of the Telecommunications Act of 1996 and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) by:

- (1) Accommodating the need for telecommunication towers/antennas while regulating their location and number in the community.

- (2) Minimizing adverse visual impacts of these towers/antennas through proper design, siting and screening.
- (3) Preserving and enhancing the positive aesthetic qualities of the built and natural environment in the Town of Allegany.
- (4) Avoiding potential damage to adjacent properties from tower failure, falling ice, etc., through engineering and proper siting.
- (5) Requiring the joint use of towers when available, and encouraging the placement of antennas on existing structures, to reduce the number of such structures in the future.

(B) Applicability

- (1) Where permitted in Section 4.02, District Use Regulations, a Telecommunications Facility may be allowed upon the granting of a special Use Permit by the Town of Allegany Planning Board, in accordance with the procedures in Article VIII of this Zoning Ordinance and the approval by the Planning Board of a Site Plan in accordance with the procedures of Article IX of this Ordinance.
- (2) **Exemptions.** The following activities and telecommunications facilities are exempt from the provisions of this section:
 - (a) Towers and antenna(s) that were erected prior to the effective date of this Zoning Ordinance may be repaired and maintained without restriction.
 - (b) Antennas used solely for individual residential household television, radio and internet reception.
 - (c) Antennas used by restaurants, bars, motels and similar establishments as part of their operations for customer service.
 - (d) Pursuant to Section 6409 of the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act), the replacement of antennas on towers, or the addition of antennas and/or other equipment on existing towers shall not require the issuance of a Special Use Permit, provided that the Town's Code Enforcement Officer determines that the proposed additions do not represent a "substantial change" as defined in that law.
- (3) The Town of Allegany, at the expense of the applicant, may employ its own consultant(s) to review the findings and conclusions of any safety analysis, visual analysis, or other technical information provided by the applicant, pursuant to Article XI of this Ordinance.
- (4) No building permit shall be issued for a new Telecommunications Tower until the applicant provides proof that the user of space on the facility has been leased by or

will be operated by a provider licensed by the FCC to provide service in this area.

(C) Co-location

- (1) The shared use of existing telecommunications towers or other structures shall be preferred to the construction of a new facility. The applicant must demonstrate that the proposed Telecommunication Facility cannot be accommodated on existing telecommunications facilities 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 for those facilities.
 - (b) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably 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.
 - (d) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures.
 - (e) The property owner or owner of the existing tower or other structure refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates.
- (2) The applicant must submit a copy of its policy regarding co-location on the proposed tower with other potential future applicants. Such policy should allow co-location under the following conditions:
 - (a) the new antenna(s) and equipment do not exceed structural loading requirements, interfere with tower space used or to be used by the applicant nor pose any technical or radio frequency interference with existing equipment, and
 - (b) the party desiring to co-locate pays the applicant an appropriate and reasonable sum to co-locate, and
 - (c) the party desiring to co-locate has a similar policy of co-location for the applicant.

(D) Special Use Permit Application

An applicant for a Telecommunications Facility shall make written application to the Planning Board. The application shall include:

- (1) Special Use Permit Application and Site Plan Application
- (2) Part 1 of the SEQR Environmental Assessment Form.
- (3) **Project Participants.** Provide the names, addresses, phone numbers, and email addresses for the following involved parties, as appropriate:
 - (a) The property owner of the project site. The application shall contain proof of the landowner's consent if the applicant will not own the property.
 - (b) The service-provider (both the corporate contact information and a local contact). Include the FCC license number.
 - (c) The Applicant's Engineering consultant.
- (4) **Site Description.** Provide information regarding the current site conditions, including:
 - (a) Existing site improvements, including access, utilities and the presence of existing towers, buildings or other structures.
 - (b) Existing vegetation, plants, trees, etc.
 - (c) Map showing all wetlands, surface water bodies, permanent or intermittent streams and/or floodplains.
 - (d) General topography of the site
- (5) **Site Plan.** The site plan shall be prepared by a professional engineer licensed in the state of New York and must bear the preparer's signature and stamp. The Site Plan must be drawn to scale and shall include at a minimum:
 - (a) Boundaries of the site
 - (b) Tower location. If guy wires will be used, the location of the guy wires and guy anchors shall be shown.
 - (c) All existing and proposed structures, buildings, towers, antennas, utilities, roads, driveways, and parking areas, and any other proposed facilities.
 - (d) The location and use of all structures on the property and the location and use of structures on abutting properties that are located within 50 feet of the property line, showing distance between these structures and the proposed tower.
 - (e) Access road and utilities easements, if applicable.
- (6) **Grading and drainage plan,** showing the proposed limits of clearing and/or vegetation disturbance.
- (7) **Landscaping plan,** showing the location, nature and extent of any proposed fencing, landscaping and/or screening.
- (8) **Site Access.** Provide a map showing how access will be provided to the tower site, including type and size of road or driveway. Describe any proposed temporary or permanent improvements, including any proposed vegetation removal, site drainage, crossing of streams or wetlands, and installation of utilities and any impervious surfaces. Provide a grading plan for any new roads, driveways or accessways. Indicate the construction material for the road (i.e. gravel, asphalt, etc.).

- (9) Construction Details
 - (a) Elevations of the proposed tower, showing antennae and other equipment on the tower. Provide the tower height.
 - (b) The type of tower (monopole, guyed, lattice, etc).
 - (c) The color or colors of the tower.
 - (d) The location, type and intensity of any lighting on the tower.
 - (e) Elevations of accessory buildings, equipment shelters, and/or other structures that are part of the project.
 - (f) Describe how many and what types of antennas and other equipment will be located on the Tower.

- (10) "Before" and "After" propagation studies, prepared by a Professional Engineer licensed in the State of New York, demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed Telecommunications Facility.

- (11) A "Search Ring," prepared by a Professional Engineer licensed in the State of New York, and overlaid on an appropriate background map demonstrating the area within which the Telecommunications Facility needs to be located in order to provide proper signal strength and coverage to the target cell. The applicant must be prepared to explain to the Planning Board why it selected the proposed site, discuss the availability (or lack of availability) of a suitable structure within the search ring which would have allowed for a co-located antenna(s), and to what extent the applicant explored locating the proposed tower in a more intensive use district.

- (12) Describe the fall zone of the proposed tower. Demonstrate that the site can contain on-site all ice-fall or debris from tower failure.

- (13) The Planning Board, after initial review of the application, may require additional visual impact analysis. Such additional information may include line-of-sight drawings, and/or visual simulations from viewpoints selected by the Town Planning Board.

- (14) Application Fee

- (15) Any other information that the Planning Board deems necessary to evaluate the application. The Planning Board may waive any particular submission requirement(s) that it determines is unnecessary for review of a particular project.

(E) Standards for the issuance of the Special Use Permit

The Planning Board will consider the following criteria when making its decision on the application for a Telecommunications Facility, in addition to the requirements contained in Article VIII and Article IX. The Planning Board has the authority to impose reasonable conditions and restrictions as are directly related to the proposed Telecommunications Facility.

- (1) **Bonding.** At the time of approval of a Special Use Permit, the Planning Board may require the applicant to provide a demolition bond (in an amount based on the cost of removal, as determined by the Town Board in consultation with the Planning Board) for purposes of removing the Telecommunications Facility in case the applicant fails to do so, as required herein (See Section 5.22(F)). Such bond shall be posted with the Town Clerk before the building permit for the Tower shall be issued.
- (2) **Setbacks.** At a minimum, all Telecommunication Facilities shall comply with the minimum setbacks for the Zoning District in which the facility is located. The minimum setbacks shall apply to all tower parts, including guy wire anchors, and to any accessory structures and/or equipment on the ground. In addition, the tower must be set back a minimum of the height of the tower from all property lines and from existing building(s), both on-site and off-site. Additional setbacks may be required by the Planning Board in order to contain on-site substantially all ice shed and/or debris from tower failure.
- (3) **Height.** The Telecommunications Tower shall not exceed a height of 175 feet.
- (4) **Safety and Security**
 - (a) **Fall Zones:** Telecommunications facilities shall be constructed so as to minimize potential safety hazards and shall be located in such a manner that if the tower were to fall, debris will remain within the property boundaries and avoid habitable structures, public roads, utility lines and other telecommunication facilities.
 - (b) **Ice Shed:** Ice shed from the Telecommunications Tower will be accommodated on-site and will not adversely affect public roads or abutting property.
 - (c) Towers, anchor points around guyed towers, and accessory structures shall be surrounded by a fence not less than eight (8) feet in height or otherwise sufficiently protected from trespassing or vandalism.
 - (d) There shall be no permanent climbing pegs within fifteen feet of the ground.
- (5) **Visibility and Aesthetics**
 - (a) Telecommunications Facilities shall be located and buffered to the maximum extent practical and technologically feasible, to help ensure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring residences to the maximum extent possible, the Planning Board may impose reasonable conditions on the applicant, including an Alternative Tower Structure, additional screening, greater setbacks and/or improved landscaping.
 - (b) The Town may require the applicant to demonstrate reasonable efforts to co-

locate on existing towers or other available and appropriate structures and/or to construct new towers near existing towers in an effort to consolidate visual disturbances.

- (c) The applicant shall demonstrate that the proposed height for the Tower and antennas are the minimum necessary to function satisfactorily.
 - (d) Structures offering slender silhouettes (i.e. monopoles or guyed towers) may be preferable to freestanding lattice structures, except where such lattice structures offer capacity for future shared use through co-location.
 - (e) The project shall be designed to blend with the natural and/or man-made surroundings to the maximum extent practical.
 - (f) Towers shall have a finish and color designed to blend into the surroundings to the maximum extent feasible. Towers shall be of a non-reflective finish, the color of which shall be subject to the Planning Board's approval.
 - (g) Towers shall be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
 - (h) No tower shall contain any signs or advertising devices. A small sign on the fencing shall be placed to identify the ownership of the facility and a telephone number for emergencies.
- (6) **Lighting.** Towers shall not be artificially lighted except as required by the Federal Aviation Administration (FAA). Lights shall not consist of strobe lights, unless specifically mandated by FAA. Nevertheless, the Planning Board may require tower lighting, even if not required by the FAA, to promote public safety for regional aircraft, such as medical evacuation helicopters.
- (7) **Landscaping and Screening**
- (a) Existing on-site trees and vegetation shall be preserved to the maximum extent possible.
 - (b) The Planning Board may require reasonable landscaping, which may consist of trees or shrubs, around the base of the tower, accessory structures, and anchor points for guyed towers in order to screen these features to the maximum extent possible from view from adjacent residences, recreation areas, public roads and/or other sensitive property.
- (8) **Access and Parking.** A road turnaround and a minimum of one parking space shall be provided to assure adequate emergency and service access. Maximum use of existing roads, public or private, shall be made. The use of public roadways or road right-of-ways for the siting of a tower or antenna(s) accessory structures is prohibited.

- (9) **Engineering Standards.** Telecommunications facilities may operate only at Federal Communications Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency (EPA) technical exposure limits. The Planning Board may require the applicant to provide competent documentation to demonstrate that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.

(F) Abandonment and Removal

- (1) All abandoned, obsolete or unused telecommunication towers and facilities shall be removed within twelve (12) months of cessation of use. Upon removal, the tower owner shall restore the land to its previous condition, including but not limited to, seeding of the exposed soils and/or other erosion control measures.
- (2) When an application for a Telecommunications Tower is submitted to the Town, the application shall include a statement from the applicant agreeing to remove all antennas, structures, lighting and towers if the telecommunications facility were to become obsolete and/or cease to function for 12 consecutive months.
- (3) If the Special Use Permit is revoked pursuant to the procedure established in Article VIII of this Ordinance, the Tower owner shall remove the Telecommunications Facility within twelve (12) months. Upon removal, the tower owner shall restore the land to its previous condition, including but not limited to, seeding of the exposed soils and/or other erosion control measures.
- (4) If the tower owner does not remove the Facility, the Town shall exercise its right to use the bond for this purpose. If additional expenses are accrued to the Town during the demotion and site stabilization work, that cost shall be charged to the property so affected by including such expense in the next annual tax levy against the property.

(G) Periodic Inspection

Every Telecommunications Tower shall be inspected periodically for structural integrity, by a professional engineer who is licensed in the State of New York, pursuant to industry standards for inspection interval, at the owner's expense. A copy of the inspection report shall be submitted to the Town's Code Enforcement Officer (CEO). The structural inspection report shall describe the structural integrity of the facility, maintenance issues, and repairs needed or made, if any. In the event that the structural inspection indicates structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the CEO. Failure to make the needed repairs may result in revocation of the Special Use Permit.

Section 5.23 Multiple Dwellings and Townhouses

Where permitted in Section 4.02 District Use Regulations, Schedule A, all Multiple Dwellings, Townhouses, and attached single-family homes shall comply with the standards contained in this section.

- (A) The development shall be located on a lot that is a minimum of two (2) acres in size.
- (B) The development shall be connected to both the Town of Allegany municipal water supply system and the municipal sanitary sewage disposal system.
- (C) The development shall have a maximum density of six (6) dwelling units per acre.
- (D) All buildings, structures, parking lots and drive aisles shall conform to the minimum front, rear and side yard setbacks that are established for the zoning district in which the site is located, except that the access road or driveway to the site may cross the front yard setback.
- (E) A pedestrian access system shall be provided, which connects dwelling units to parking spaces and other site amenities, if any. In addition, if sidewalks are located along a frontage of the property, the interior pedestrian access system shall connect to the exterior sidewalks.
- (F) If the development contains more than one building, the project shall exhibit consistency in architectural design and materials among all the buildings and structures within the development.
- (G) If any site features, such as parking lots, access roads, open space, etc., will be owned in common by an entity other than the owners of the individual dwelling units, the project proponent shall demonstrate that an adequate legal mechanism, such as a Home Owners Association, will be formed to ensure the on-going maintenance of such features.

Section 5.24 Non-Commercial Wind Energy Conversion Systems (WECS)

(A) Intent and Purpose

The Town of Allegany recognizes that wind energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease air and water pollution that result from the use of conventional energy sources.

The purpose of these regulations is to provide standards for Non-Commercial Wind Energy Conversion Systems (WECS) that are designed for on-site home, farm and small commercial use, and that are primarily used to reduce on-site consumption of utility power. The intent of this Section is to encourage the development of non-commercial WECSs and

to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town.

(B) Application Process

- (1) Prior to construction of any non-commercial WECS, the project proponent shall first obtain Special Use Permit and Site Plan Approval from the Town of Allegany Planning Board, and a Building Permit from the Town’s Code Enforcement Officer.
- (2) In addition to the application requirements of Article VIII and Article IX, all applications for a non-commercial WECS shall include the following information:
 - (a) Name and address of the applicant
 - (b) Evidence that the applicant is the owner of the property involved or has the written permission of the owner to make such an application.
 - (c) A site plan drawn in sufficient detail to show the following:
 - i. Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - ii. Property lot lines and the location and dimensions of all existing structures and uses on site within 300 feet of the Wind Energy Conversion Systems.
 - iii. Dimensional representation of the various structural components of the tower construction including the base and footing.
 - iv. Certification by a licensed New York State Professional Engineer that the towers design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Building and Fire Prevention Code.
 - (d) Evidence that the proposed tower height does not exceed the height recommended by the manufacture or distributor of the system, provided by a licensed New York State Professional Engineer.
 - (e) Turbine information: Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of the residential wind turbine and tower.
 - (f) Photographs or detailed drawings of each wind turbine model, including the tower and foundation.
 - (g) Grading plan and erosion and sedimentation control plan
 - (h) A line drawing of the electrical components of the system in sufficient detail to allow for a determination that the manner of installation conforms to the Electrical Code adopted by New York State.

- (i) Sufficient information demonstrating that the system will be used primarily to reduce on-site consumption of electricity from the grid.
- (j) Written evidence that the electric utility service provider that serves the proposed site has been informed of the applicant's intent to install an interconnected customer-owned electricity generator, unless the applicant does not plan, and so states in the application, to connect the system to the electricity grid.
- (k) SEQR Environmental Assessment Form
- (l) Such additional information as may be reasonably requested by the Planning Board for a complete understanding of the proposed project.
- (m) The Planning Board may determine that not all of these application materials are necessary for a particular proposed project. Any requirements determined by the Planning Board not to be deemed necessary must be fully documented with the reasons clearly noted.

(C) Criteria for Approval

In addition to the criteria contained in Article VIII and Article IX of this Zoning Ordinance, the Planning Board shall use the following criteria to evaluate all Non-Commercial Wind Energy Conversion Systems:

- (1) **Minimum Lot Size:** A non-commercial WECS shall be located on a lot that is a minimum of one acre in size.
- (2) Only one non-commercial WECS shall be allowed per lot. The system shall be primarily used to reduce the on-site consumption of electricity and at no times shall electricity be distributed across property lines.
- (3) **Setbacks:** The non-commercial WECS shall be set back a minimum of 1.5 times the height of the WECS from:
 - (a) Any year-round residence in existence at the time the application is made.
 - (b) Property lines of the site on which the structure is located.
 - (c) The boundary of any R-1 or R-2 Zoning District
 - (d) The right of way of public roads
- (4) **Maximum height:** The maximum overall height of any non-commercial wind energy conversion system shall be 150 feet.
- (5) The maximum turbine output shall not exceed 100 kW per hour.

- (6) The WECS shall be painted a non-reflective, unobtrusive color that blends the system and its components into the surrounding landscape to the greatest extent possible and incorporates non-reflective surfaces to minimize any visual disruption.
- (7) **Lighting:** Exterior lighting on any structure associated with the system shall not be allowed, except lighting that is specifically required by the Federal Aviation Administration (FAA).
- (8) **Signage:** No advertising sign or logo shall be placed or painted on any turbine or tower. The Planning Board may allow the placement of the manufacturer's logo on a ground level structure in an unobtrusive manner.
- (9) **Compliance with regulatory agencies:** The applicant is required to obtain all necessary regulatory approvals and permits from all federal, state, county, and local agencies having jurisdiction related to the construction of the non-commercial Wind Energy Conversion System. If all such approvals have not been received at the time that the Planning Board considers the application for Special Use Permit, receipt of these other agency approvals shall be a condition to be completed prior to the issuance of a Building Permit.
- (10) **Safety and security requirements:** The applicant shall adhere to the following safety and security requirements.
 - (a) **Safety shutdown:** Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. The conformance of rotor and over-speed control design and fabrication with good engineering practices shall be certified by the manufacturer.
 - (b) **Grounding:** All structures which may be charged with lightning shall be grounded according to applicable electrical code.
 - (c) **Wiring:** All wiring associated with the wind energy facility shall be installed underground except for "tie-ins" to a public utility company and public utility company transmission poles, towers or lines. This standard may be modified by the Planning Board if the terrain is determined to be unsuitable due to reasons of excessive grading, biological impacts, or similar factors.
 - (d) **Ground clearance:** The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.
 - (e) **Climbability:** Wind turbine towers shall not be climbable up to 25 feet above ground level and/or other appropriate method of access control shall be provided.
 - (f) **Anchor points for guy wires:** Anchor points for any guy wires for a system tower shall be located on the property that the system is located on and not on or across any above ground electric transmission or distribution lines. The point of attachment for

the guy wires shall be enclosed by a fence 6 feet high or sheathed in bright orange or yellow covering from to eight feet above the ground. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.

- (g) *Signage*: Appropriate warning signage shall be placed on wind turbine towers, and electrical equipment. Signage shall also include one (1) twenty- four-hour emergency contact numbers to the owner of the wind turbine as well as signage warning of electrical shock or high voltage and harm from revolving machinery.

(11) **Noise Standard**

- (a) *Audible noise standard*: The A-weighted sound pressure level due to wind turbine operations shall not exceed 40 dB(A) Leq one- hour, measured at the property lines of the parcel on which the wind turbine is installed.
- (b) *Low frequency noise*: A non-commercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects, as demonstrated by studies or other evidence submitted, the habitability or use of any noise sensitive property, which is in existence at the time an application for a non-commercial WECS facility receives final approval from the Town of Allegany.

- (12) Interference with television, microwave and radio reception. The non-commercial wind energy conversion energy system shall be operated such that no disruptive electromagnetic interference is caused. If it is demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.

- (13) Erosion Control. Prior to granting a special use Permit for a non-commercial WECS, the Planning Board shall determine that the Erosion and Sedimentation Control Plan is adequate.

(D) Abandonment of Use

- (1) All non-commercial WECSs shall be maintained in good condition, according to the manufacturer's specifications, and in accordance with all requirements of this section.
- (2) Failure to abide by and faithfully comply with the standards of this section and with any and all conditions that may be attached to the granting of the Special Use Permit shall constitute grounds for the revocation of the permit, after a public hearing, pursuant to Section 8.03(C)(8) of this Ordinance.

(E) Assessment

A non-commercial wind energy conversion system shall be subject to assessment by the Town of Allegany.

(F) Planning Board Action

The Planning Board may grant the Special Use Permit, deny the Special Use Permit, or grant the Special Use Permit with written stated conditions. Denial of the Special Use Permit shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the Special Use Permit, the applicant shall obtain a building permit for each tower.

(G) Amendments to Approval

Any changes or alterations to the wind energy conversion system, after approval of the Special Use Permit and Site Plan, shall require amendment to the Special Use Permit. Such amendment shall be subject to all the requirements of this section.

Section 5.25 Commercial Wind Energy Conversion Systems (WECS)

(A) Intent and Purpose

The Town of Allegany recognizes that wind energy is an abundant, renewable and nonpolluting energy resource of the Town and that its conversion to electricity will reduce dependence on nonrenewable energy resources and decrease air and water pollution that result from the use of conventional energy sources.

The purpose of these regulations for Commercial Wind Energy Conversion Systems (WECS) is to ensure that development of these facilities will have a minimal impact on adjacent properties and to protect the health, safety and welfare of residents of the Town. Specifically, regulation of the siting and installation of wind turbines is necessary for the purpose of protecting the health, safety, and welfare of neighboring property owners and the general public. Wind Energy Facilities represent significant potential aesthetic impacts because of their large size, lighting, and shadow flicker effects. If not properly regulated, installation of Wind Energy Facilities can create drainage problems through erosion and lack of sediment control for facility sites and access roads, and harm farmlands through improper construction methods. Wind Energy Facilities may present a risk to bird and bat populations if not properly sited. If not properly sited, Wind Energy Facilities may present risks to the property values of adjoining property owners. Wind Energy Facilities are significant sources of noise, which, if unregulated, can negatively impact adjoining properties. Construction of Wind Energy Facilities can create traffic problems and damage local roads. Wind Energy Facilities can cause electromagnetic interference issues with various types of communications.

(B) Application Process

(1) Applicability

No Commercial WECS shall be constructed, reconstructed, modified, or operated in the Town of Allegany except in a Wind Energy Overlay Zone created by the Town Board. Prior to construction of any commercial WECS, the project proponent shall first obtain Special Use Permit and Site Plan Approval from the Town of Allegany Planning Board and a Building Permit from the Town's Code Enforcement Officer.

Upon receipt of an application, the Special Use Permit and Site Plan Approval shall be processed by the Planning Board in accordance with this Section. The rezoning request will be referred to the Planning Board as required by Article XI of this Ordinance, except that the Town Board may wait until the Planning Board has completed its application review, and any variances the Zoning Board of Appeals has granted, if required, prior to holding its public hearing. Upon completion of the Special Use Permit and Site Plan and the Town Board shall consider rezoning request. The Town Board and Planning Board may, if they wish, hold joint public hearings.

(2) Initial Application Materials

In order to ensure Planning Board input into the parameters of the studies that are required in Subsection 5.25(B)(3), there will be a two-stage application process. Initially, in addition to the application requirements of Article VIII and Article IX, all applications for a commercial WECS shall include the following information:

- (a) Name and address of the applicant
- (b) Evidence that the applicant is the owner of the property or has the written permission of the owner to make such an application.
- (c) A site plan drawn in sufficient detail to show the following:
 - i. Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
 - ii. Utility lines, both above and below ground, within a radius equal to the proposed tower height, including the blades.
 - iii. Property lot lines and the location and dimensions of all existing structures and uses on site within 1000 feet of the Wind Energy Conversion Systems.
 - iv. Surrounding land use and all off-site structures within 1000 feet, or 2.25 times the tower height, whichever is greater, of the Wind Energy Conversion Systems.
 - v. Description of the various structural components of the tower construction including the base and footing.
 - vi. Existing topography
 - vii. Proposed plan for grading and removal of natural vegetation

- (d) SEQRA Environmental Assessment Form.
- (e) Other information: Such additional information as may be reasonably required by the Town Engineer, Town Planner or Planning Board for an adequate assessment of the proposed project.
- (f) The Planning Board may determine that not all of these application materials are necessary for a particular proposed project. Any requirements determined by the Planning Board not to be deemed necessary must be fully documented with the reasons clearly noted.

(3) Studies and information required prior to decision on the application

After a review of the Environmental Assessment Form and the proposed project, the Planning Board shall provide direction to the applicant on the methodology and parameters of the studies to be provided, below:

- (a) Proposed plan for site restoration after construction, prepared according to NYS Department of Agriculture and Markets and NYS Department of Environmental Conservation guidelines.
- (b) Plan for ingress and egress to the proposed project site including:
 - i. A description of the access route from the nearest State, County, and/or Town-maintained roads
 - ii. Road surface material, stating the type and amount of surface cover.
 - iii. Width and length of access route.
 - iv. Dust control procedures during construction and transportation.
 - v. A road maintenance schedule or program.
- (c) Proposed construction plan in sufficient detail to permit evaluation of all potential environmental impacts. Topics covered should include (but are not necessarily limited to) proposed construction schedule, hours of operation; preliminary designation of heavy haul routes; a list of material equipment, and loads to be transported; identification of temporary facilities intended to be constructed. Prior to issuance of building permits for approved projects a detailed construction plan including but not limited to construction schedule, hours of operation; designation of heavy haul routes; a list of material equipment, and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in the field with name and phone number.
- (d) Preliminary Erosion and Sediment Control Plan (A draft SWPPP will meet this requirement); with final plans to be submitted prior to issuance of building permits for approved projects.

- (e) Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.
- (f) Photographs and/or detailed drawings of each wind turbine model, including the tower and foundation.
- (g) Visual Assessment, prepared in conformance with the NYSDEC's Program Policy Assessing and Mitigating Visual Impacts, including a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures. The Planning Board shall determine which viewpoints the visual assessment shall, at a minimum, include.
- (h) Noise analysis. A Noise Analysis shall be furnished which shall include the following:
 - i. A description of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise report shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
 - ii. A sound survey and report, prepared by a qualified professional, that analyzes the daytime and nighttime existing ambient (background) sound level separately (including projected seasonal variations), including but not limited to separate measurements of low frequency and A-weighted sound pressure levels across a range of wind speeds (including near cut-in). The study shall take into account turbulence, distance from the turbines, and wind direction. The measured A-weighted sound pressure levels shall be reported as L₉₀ one-hour averages. The study documents 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).
 - iii. The Analysis shall include expected noise impacts from both construction and operation, and include all ancillary facilities including any substations, in accordance with the requirements of subparagraph ii above.
 - iv. A description of the project's proposed noise-control features, including specific measures proposed to protect workers, and specific measures proposed to mitigate noise impacts consistent with the requirements of this ordinance.
 - v. Manufacturers' noise design and field testing data for turbine models proposed to be constructed, if available. Preference is given to tests from existing facilities. Nothing in this paragraph shall be read as limiting the

Town's right to enter into a non-disclosure agreement to protect proprietary data.

- (i) A preliminary geotechnical report shall be furnished which shall, at a minimum, address the following in sufficient detail to allow an environmental review of the potential impacts: Soils and geologic characteristics of the site; an assessment of the soil suitability for construction of the proposed WECS; slope stability information, and preliminary grading plan. In addition, prior to the issuance of Building Permits to approved projects, reports shall be delivered to the Town covering the following:
 - i. Soils and geologic characteristics of the site based on on-site sampling and testing, to provide an assessment of the soil suitability for construction of the proposed WECS.
 - ii. Foundation design criteria for all proposed structures.
 - iii. Slope stability analysis.
 - iv. Grading criteria for ground preparation, cuts and fills, soil compaction.
- (j) Information sufficient to evaluate safety impacts including potential ice throw, tower failure, or blade throw.
- (k) Lighting plan: The applicant shall submit a commercial wind energy facility lighting plan that describes all lighting that will be required, including any lighting that may be required by the FAA. Such plan shall include but is not limited to the planned number and location of lights, light color, whether any such lights will be flashing, and mitigation measures planned to control the light so that it does not spill over onto neighboring properties.
- (l) Shadow Flicker Study: The applicant shall conduct a study on potential shadow flicker. The study shall identify locations where shadow flicker may be caused by the WECSs and the expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures that shall be taken to eliminate or mitigate the problem.
- (m) Study of potential impacts to birds and bats, using methodology approved by NYS Department of Environmental Conservation, US Fish and Wildlife Service, or another agency acceptable to the Planning Board.
- (n) Decommissioning and Site Restoration Plan
- (o) FAA notification: A copy of written notification to the Federal Aviation Administration.
- (p) Utility or NYISO notification: Utility or NYISO interconnection data including details of any physical improvements required to create an interconnection between the electric grid and the proposed WECS.

- (q) Notification to microwave communications link operators: An application that includes any wind turbine which is located within two miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.
- (r) Other information: Such additional information as may be reasonably required by the Town Engineer, Town Planner or Planning Board for an adequate assessment of the proposed project.
- (s) The Planning Board may determine that not all of these application materials is necessary for a particular proposed project. Any requirements determined by the Planning Board not to be deemed necessary must be fully documented with the reasons clearly noted.

(4) SEQR Review

Pursuant to Section 617.13 of NY State Environmental Quality Review Regulations, and Section 9.07 of the Town's Site Plan Review regulations in this Zoning Ordinance, the Town may hire consultants to assist the Planning Board in its review of the potential impacts of a proposed project and the assessment of impacts provided by the applicant. The Town will charge the applicant for the cost of such consultant to the extent allowed in Part 617.13 and/or Section 9.07.

- (5) Due to the technical nature and complexity of Commercial WECS, as part of the site plan review process, the applicant shall be notified and required to establish an escrow account to reimburse the Town for legitimate costs of review associated with the application in accordance with Section 9.07 of the Zoning Code. The funds may be utilized for the paying of engineering, legal, and other professionals qualified to review the required plans, report, and other technical information submitted in support of an application.

(C) Criteria for Approval

In addition to the criteria contained in Article VIII and Article IX of this Zoning Ordinance, the Planning Board shall use the following criteria to evaluate all Commercial Wind Energy Conversion Systems:

- (1) Setbacks. All commercial WECS shall comply with the following setbacks:
 - (a) All wind turbines and towers shall be set back from property lines a minimum of 1.5 times the height of the WECS, as defined in Article II. However, where adjoining lots are both part of the proposed project, this setback requirement shall not apply.

- (b) All wind turbines and towers shall be set back a minimum of 2,500 feet from the boundaries of any R-1 or R-2 Zoning District.
- (c) All wind turbines and towers shall be set back a minimum of 1000 feet, or 2.25 times the tower height, whichever is greater, from any year-round residence that exists at the time that an application for a WECS is made to the Town. For purposes of this sub-section, a year-round residence shall be considered to be in existence if a building permit for such structure has been issued by the Town's Code Enforcement Officer, even if construction is not yet completed and the residence is not yet occupied. For purposes of this sub-section, a seasonal dwelling is not construed to be a year-round residence.
- (d) All wind turbines and towers shall be set back from all structures and buildings, other than year round residences, that are in existence at the time of the application, or for which a building permit has been issued, a minimum of 1.5 times the height of the WECS, as defined in Article II. The Planning Board may, at its discretion, exempt minor structures, such as walls, fences, tool sheds and similar minor structures from this setback requirement.
- (e) All wind turbines and towers shall be set back from any public road a minimum of 1.5 times the height of the WECS, as defined in Article II.

(2) Noise

A Commercial WECS shall not be approved unless the applicant demonstrates that the proposed project complies with the following noise requirements. In order to enable the Planning Board to make this determination, the applicant shall submit the noise assessment required in Sub-section 5.25(B). Any variances that may be required from the standards in this sub-section shall be documented in said noise assessment.

- (a) Audible noise standard: The A-weighted sound pressure level due to wind turbine operations shall not exceed 40 dB(A) Leq one- hour, measured at the exterior of non-participating year round and seasonal noise sensitive properties, which are in existence at the time an application for a commercial WECS facility receives final approval from the Town of Allegany.
- (b) Low frequency noise: A commercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects, as demonstrated by the studies or other evidence submitted, the habitability or use of any non-participating noise sensitive property, which is in existence at the time an application for a commercial WECS facility receives final approval from the Town of Allegany.
- (c) Within one year of commencement of commercial operation, the project proponent shall submit a noise study of operation conditions to ensure that the project is in compliance with the standards of this section. In addition to the

initial one-year operational study, the Planning Board as part of conditions to any permit, or the Town Board as part of any conditions on a rezoning, or through another mechanism, may require the project owner, at its own expense, to periodically conduct noise studies and provide those studies to the Town.

(3) Noise and Setback Easements

In the event that a Commercial WECS does not meet a setback requirement or exceeds the noise criteria, above, the Planning Board may grant a waiver of the setback and/or noise criteria, except for the setback required by Sub-section 5.25(C)(1)(a), in the following circumstances:

- (a) Written consent from the affected property owners is presented to the Planning Board, stating that they are aware of the WECS and the noise and/or setback limitations contained in this Zoning Ordinance, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed and/or (2) setbacks less than required; and
- (b) 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 Cattaraugus 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 the consent of the Planning 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.

(4) Interference with television, microwave and radio reception

The applicant must submit information that the proposed construction of the Commercial Wind Energy Conversion System will not cause interference with microwave transmissions, cellular transmissions, residential television interference or radio reception of domestic or foreign signals. The applicant shall include specific measures proposed to prevent interference, a complaint procedure, and specific measures proposed to mitigate interference impacts.

(5) Interference with aviation navigational systems

- (a) The applicant shall provide documentation that the proposed WECS will not cause interference with the operation of any aviation facility.
- (b) The applicant shall provide documentation that the proposed WESC complies with all Federal Aviation Administration (FAA) regulations.
- (c) Locking mechanisms to limit radar interference required: All commercial WECS shall include a locking mechanism which prevents the blades from rotating when

not producing power, in order to limit airport radar interference. This provision does not apply while the WECS is "free-wheeling" during start-up and shutdown. The Planning Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference will be caused by the commercial WECS.

- (6) Safety and security requirements
- (a) Safety shutdown: Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. A manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
 - (b) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
 - (c) Wiring: All wiring between the wind turbines and the wind energy facility substation shall be placed underground unless the Planning Board determines that this is not prudent or practicable due to site-specific constraints. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.
 - (d) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
 - (e) Climability. Wind turbine towers shall not be climbable up to 25 feet above ground level.
 - (f) Access doors locked: All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
 - (g) Signage: Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind energy facility entrances. Signage shall also include two twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with Local, State, and Federal Codes.
- (7) Ice throw: The Planning Board shall determine the acceptable ice throw range based on the activities in the area, location and calculations of the ice throw.
- (8) Fire hazard protection: The applicant shall submit a Fire Control and Prevention Program that is appropriate and adequate for the proposed facility. The proposed program may include, but is not limited to, the following
- (a) Fireproof or fire resistant building materials.
 - (b) Buffers or fire retardant landscaping.
 - (c) Availability of water.

- (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment-without regular human occupancy.
- (e) Provision of training and fire-fighting equipment for local fire protection personnel and/or other emergency responders.
- (f) Response Plan showing the primary Fire Department and Emergency Medical Service (EMS) who would be first responders.

(9) Impact on wildlife species and habitat

Development and operation of a commercial wind energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Allegany Comprehensive Plan and/or the studies and plans of other regional agencies, based on criteria established by the Federal or State regulatory agencies, as determined by the Town of Allegany Planning Board during SEQRA review. The impact of a commercial WECS on migratory birds and bats shall be evaluated and mitigated based on SEQRA findings.

(10) Visual Impact

- (a) No advertising sign or logo shall be placed or painted on any part of any commercial wind energy conversion system.
- (b) Wind turbines shall be painted a non-obtrusive (e.g., such as white, gray, or beige) color that is non-reflective. In order to reduce any daytime lighting requirements by the FAA, the Planning Board may require consultation with the FAA to determine an appropriate color for the structures.
- (c) Where more than one wind turbine is proposed, the project shall use wind turbines whose appearance is similar throughout the project, to provide reasonable uniformity in terms of overall size, geometry and rotational speed.
- (d) Unless required by the FAA or by the Town of Allegany Planning Board, no lighting shall be installed on the WECS turbine or tower, except for ground level security lighting.

(11) Shadow Flicker

The WECS shall be designed such that the project shall minimize shadow flicker onto adjacent existing year-round residences. Mitigation measures, which may include landscaping, shall be incorporated into any Special Use Permit approval. The required shadow flicker study shall identify areas where shadow flicker may interfere with

residences and describe measures that shall be taken to eliminate or minimize the problem. For purposes of this sub-section, a residence shall be considered to be in existence if a building permit for such structure has been issued by the Town's Code Enforcement Officer, even if construction is not yet completed and the residence is not yet occupied. For purposes of this sub-section, a seasonal dwelling is not construed to be a year-round residence.

- (12) Height Limit: The maximum height of any commercial WECS shall be five hundred (500) feet.

(D) Decommissioning and Site Restoration Plan and Bond

- (1) The applicant shall submit a Decommissioning and Site Restoration Plan, including cost estimate, to the Town Planning Board for its review and approval, prior to the approval of any Special Use Permit. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to 3.5 feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the commercial WECS. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan. The Decommissioning Plan shall include information regarding the anticipated life of the project.
- (2) As a condition of Special Use Permit approval, the Planning Board shall require the project sponsor to execute and file with the Town Clerk a bond or other form of security acceptable to the Town Board and Town Attorney as to the form, content and manner of execution, in an amount sufficient to ensure the faithful performance of the removal of the tower, wind turbine, and other components of the WECS and the restoration of the site subsequent to such removal, in accordance with the approved Decommissioning and Site Restoration Plan.
- (3) The sufficiency of such bond shall be confirmed at least every five years by an analysis and report of the cost of removal and site restoration, such report to be prepared by a NYS licensed engineer. The project sponsor/operator shall pay the cost of such report. If said analysis and report determines that the amount of the bond in force is insufficient to cover the removal, disposal and site restoration costs, the bond shall be increased to the amount necessary to cover such costs within 10 days of the applicant's receipt of such report. The report and increased amount of the bond shall be filed with the Town Clerk.
- (4) All bond requirements shall be fully funded before a Building Permit is issued.
- (5) The Decommissioning and Site Restoration Bond shall be in effect for the entire duration of the Special Use Permit.

- (6) The applicant and his/her successors or assigns in interest, shall maintain the required bond funds for the duration of the Special Use Permit.

(E) Road Bond

- (1) Construction of WECSs poses potential risks because of the large size of construction and transport (delivery) vehicles and their impact on traffic safety and their physical impact on local roads. Construction and delivery vehicles shall use traffic routes established as part of the application review process. Factors in establishing such corridors shall include: (1) minimizing traffic impacts from construction and delivery vehicles; (2) minimizing WECS-related traffic during times of school bus activity; (3) minimizing wear and tear on local roads; and (4) minimizing impacts on local business operations. Permit conditions may limit WECS-related traffic to specified routes and include a plan for disseminating traffic route information to the public.
- (2) The applicant is responsible for remediation of damage to public roads caused by WECS-related traffic, after completion of the installation of the WECS. To ensure that this remediation occurs, prior to the issuance of a Building Permit, the project sponsor shall post a public improvement bond in an amount, as determined by the Town Board and Highway Superintendent, sufficient to repair any damage that occurs to Town roads during the construction phase of the project. The Town Attorney shall approve the form of the bond.
- (3) In the event that any post construction maintenance or replacement of components, which could affect Town roads, is necessary, the project owner/operator shall notify the Town and a new bond for any potential damage to Town roads shall be posted.

(F) Certification

The applicant shall provide the following certifications and studies as part of an application for Building Permit.

- (1) Certification of structural components: The foundation, tower and compatibility of the tower with the rotor and rotor-related equipment shall be certified in writing by a structural engineer registered in New York. The engineer shall certify compliance with good engineering practices and compliance with the appropriate provisions of the Building Code that have been adopted in New York State. This shall be provided prior to the issuance of the Building Permit.
- (2) Certification of post construction: After completion of construction of the Wind Energy Conversion System, the applicant shall provide a post-construction certification from a licensed professional engineer registered in the State of New York that the project complies with applicable codes and industry practices and has been completed according to the design plans. This certification shall be provided to the Code Enforcement Officer and shall be maintained in a permanent file.

- (3) Certification of electrical system: The electrical system shall be certified in writing by an electrical engineer registered in New York. The engineer shall certify compliance with good engineering practices and with the appropriate provisions of the Electric Code that have been adopted by New York State. This shall be provided prior to the issuance of the Building Permit.
- (4) Certification of rotor overspeed control: The rotor overspeed control system shall be certified in writing by a mechanical engineer registered in New York State. The engineer shall certify compliance with good engineering practices. This shall be provided prior to the issuance of the Building Permit.

(G) Liability Insurance

- (1) Prior to the issuance of a Building Permit, the project sponsor shall provide proof, in the form of a duplicate insurance policy or a certificate issued by an insurance company, that liability insurance has been obtained to cover damage or injury which might result from the failure of the tower, turbine or other component of the WECS.
- (2) Liability insurance shall be carried for the life of the project, through decommissioning. Proof of liability insurance shall be filed annually with the Town Clerk.

(H) Transfer of Ownership

- (1) If the ownership of the WECS facility changes, the new owner shall present proof to the Town Clerk that all the required bonds and insurance policies remain in full force and effect. The new owner shall provide a written statement that he/she is aware of the conditions and requirements of the Special Use Permit, which continue to govern the operation of the facility.
- (2) In order to ensure compliance with this provision, the person/company to whom the special use permit is originally issued, and subsequent owners, shall provide notification to the Town Clerk 30 days prior to the change of ownership.

(I) Inspections

Unless waived by the Planning Board, wind turbines or towers over 150 feet in height shall be inspected by a New York State Licensed Professional Engineer, who has been approved by the Town, annually or at any other time upon a determination by the Town's Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage. A copy of the inspection report shall be submitted to the Town Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

(J) Permit Revocation

- (1) 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, all other standards and requirements of this ordinance, and other permit conditions.
- (2) Should a WECS become inoperative, or should any part of the WECS be damaged or become unsafe or should a WECS violate a permit condition, or violate a standard or requirement of this ordinance, the owner/operator shall remedy the situation within 90 days after written notice from the CEO. The Town Board may extend this period.
- (3) Upon notice from the CEO that the WECS is not repaired or made operational or brought into permit compliance after said notice pursuant to Section 5.25(J)(2) above, the Planning Board shall hold a public hearing at which both the public and the operator/owner are given the opportunity to be heard and present evidence, including a plan to come into compliance. Following the close of the public hearing, the Planning Board may either:
 - (a) order compliance within a stated timeframe; or
 - (b) Revoke the Special Use Permit and order removal of the WECS within 90 days and site remediation pursuant to the approved Decommissioning and Site Restoration Plan.

(K) Decommissioning of WECS

- (1) Non-functional and/or inoperative WECS defined
 - (a) If any Commercial WECS remains non-functional or inoperative for a continuous period of one (1) year, the permittee shall remove the WECS at his/her own expense and restore the site, in accordance with the approved Decommissioning and Site Restoration Plan. A commercial WECS shall be deemed non-functional and/or inoperative if it has not generated power within the preceding twelve months.
 - (b) As a condition of approval of any Special Use Permit, the Planning Board may request that the applicant periodically submit documentation reporting the power output generated by the WECS.
- (2) Use of Decommissioning Bond
 - (a) Any non-functional or inoperative WECS, or any WECS for which the Special Use Permit has been revoked, shall be removed from the site and the site restored in accordance with the approved Decommissioning and Site Restoration Plan within 90 days of the date on which the facility becomes non-functional or inoperative, as defined above, or of the revocation of the Special Use Permit.

- (b) If removal of the WECS is required and the applicant, permittee or successors fails to remove the WECS and restore the site in accordance with the approved Decommissioning and Site Restoration Plan, the Town Board may contract for such removal and restoration and pay for the removal and restoration from the posted Decommissioning and Site Restoration Bond.
- (c) If the bond is not sufficient, the Town shall charge the permittee for the costs over and above the amount of the bond.

(L) Planning Board Action

The Planning Board may grant the Special Use Permit and Site Plan, deny the Special Use Permit and Site Plan, or grant the Special Use Permit and Site Plan with written stated conditions. Denial of the Special Use Permit and Site Plan shall be by written decision based upon substantial evidence submitted to the Board. Upon issuance of the Special Use Permit and Site Plan, the applicant shall obtain a building permit for each tower.

(M) Amendments to Approval

Any changes or alterations to the wind energy conversion system, after approval of the Special Use Permit and Site Plan, shall require amendment to the Special Use Permit and Site plan, except for Site Plan changes (including movement of turbines, roads or other ancillary improvements) where there are 1) no new properties involved that were not previously part of the Project; 2) no impacts on wetlands or wetland buffers; 3) no violations of the noise and physical setback requirements of this Section; and 4) no more than a 10% increase in the length of any access road. Such amendment shall be subject to all the requirements of this section.

(N) NYS Real Property Tax Law Exemption

The Town of Allegany hereby exercises its right to opt out of the Tax Exemption provisions of Real Property Tax Law Section 487, pursuant to the authority granted by paragraph 8 of that law, or to exercise its right to require a payment in lieu of taxation pursuant to paragraphs 9(a) and 9(b) of that law.

ARTICLE VI NONCONFORMING USES, LOTS AND BUILDINGS

Section 6.01 Intent

- (A) This Article describes the status of land, structures and/or the uses of land or structures which were lawful before these regulations were passed or amended, but which have become prohibited, restricted or substandard. While permitting non-conforming uses and structures to continue, this Article is intended to limit the enlargement, alteration, restoration or replacement of non-conforming uses and/or structures, in order to limit the discrepancy between existing conditions and the development standards contained in this Ordinance.
- (B) The intent and purpose of this Article is to establish regulations for the continuance, maintenance, repair, restoration, moving and discontinuance of nonconforming lots, structures, land and uses, in order to accomplish following objectives:
- (1) To permit nonconforming uses or lots to continue until they are removed, but not to encourage their survival, and to minimize any adverse effect on the adjoining properties and developments.
 - (2) To regulate their maintenance and repair.
 - (3) To restrict their rebuilding if substantially destroyed.
 - (4) To require their permanent discontinuance if not operated for a period of 12 months.
 - (5) To require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the Town's Comprehensive Plan and this Ordinance.

Section 6.02 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 amendments thereto, may be continued even though such use does not conform with the provisions of this Ordinance. However, no unlawful building, structure, lot or land or unlawful use of a building, structures, or lot existing at the effective date of this Ordinance or any amendment thereto shall be deemed to be a nonconforming building, structure, lot, or use.

Section 6.03 Discontinuance of Use / Abandonment

- (A) Whenever any part of a building, structure or land occupied by a nonconforming 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 nonconforming use.

- (B) Whenever a nonconforming use of a building or structure, lot, or part thereof, has been discontinued, for any reason or cause, for a period of twelve consecutive months, such use shall be deemed to have been abandoned and shall not be re-established, and the use of the premises thereafter shall be in conformity with the regulations of the zoning district in which it is located.

Section 6.04 Change of Use

- (A) A nonconforming use shall not be changed unless it is changed to a conforming use. If the use is changed to a conforming use, it may not be thereafter changed back to any nonconforming use.
- (B) Should any structure be moved for any reason for any distance, it shall thereafter conform to the requirements for the District in which it is located after it is moved.

Section 6.05 Repairs and Alterations

- (A) Normal maintenance of a nonconforming building or structure is permitted.
- (B) Unless changed to a conforming use, a building or structure that is used for a non-conforming use may not be reconstructed or structurally altered to an extent exceeding in aggregate cost fifty (50) percent of the market value of the building. For purposes of this section, the market value of the building shall be determined by dividing the assessed value by the equalization rate. If reconstruction or improvement is permitted pursuant to this subsection, there shall be a five year wait period before any property owner can again reconstruct or make a substantial improvement, unless the building is changed to a conforming use.
- (C) A building or structure that is used for a conforming use, but that does not meet the dimensional requirements of Section 4.03, Schedule B and elsewhere this Ordinance, may not be expanded, if by such expansion the setbacks or other dimensional requirements would become more non-conforming, unless an area variance for such expansion is granted by the Zoning Board of Appeals.
- (D) **Manufactured / Mobile Home Replacement.** In any zoning district, an existing mobile or manufactured home, which does not conform to the standards in Section 5.08 of this Ordinance, may be replaced with another non-conforming home, provided that the replacement home is the same size or larger than the home that is being replaced and that the replacement home conforms to all standards in the current Building Code.

Section 6.06 Extensions and Enlargements

A nonconforming use shall not be enlarged or extended, except as follows:

- (A) No nonconforming uses shall be extended or enlarged, nor increased to occupy a greater area of land than was occupied at the effective date of the adoption of this Ordinance. However, the extension of a conforming use to any portion of a building used for a nonconforming use, which existed prior to the enactment of this Ordinance, shall not be deemed the extension of such nonconforming use.
- (B) A nonconforming use shall not be extended or enlarged to displace a conforming use under any circumstances.
- (C) A structure, use or occupancy existing lawfully at the time this Ordinance or any amendment thereto becomes effective, but which does not conform with the off-street parking, loading, stacking and landscaping regulations, may be occupied or continued without such parking, loading, stacking and landscaping, subject to the other provisions of this Article.

Section 6.07 Restoration

- (A) A nonconforming building or structure damaged by fire, flood or any other means may be repaired, rebuilt, restored, reconstructed, or rehabilitated, without enlargement. A building permit to repair the damaged structure must be obtained within one year of the damage to the structure and the repairs must be completed within one year from the date of issuance of the building permit, or the nonconforming status of the use or structure shall be deemed to be terminated.
- (B) A damaged nonconforming structure shall not be enlarged, unless the non-conformity is removed and the remodeled and/or rebuilt structure conforms to all requirements of the Zoning Ordinance.

Section 6.08 Prior Approval of Permits and Variances

Nothing contained in this Ordinance shall require any change in plans or prevent the construction of a building or other structure for which a building permit was lawfully issued and which later was made nonconforming by adoption of this Ordinance or subsequent amendments thereto, provided that either:

- (A) The construction shall have commenced prior to the nonconforming date and construction thereafter is diligently continued and is entirely completed within one (1) year from the date of the passage of this Ordinance or the amendment thereto.
- (B) The Zoning Board of Appeals makes a finding that substantial expenditures have been made or substantial financial obligations have been incurred for such nonconforming building or structure prior to the date of the adoption of this Ordinance or the amendment that resulted in the structure or use becoming non-conforming.

ARTICLE VII ADMINISTRATION

Section 7.01 Purpose

The purpose of this article is to ensure that all citizens and property owners are treated fairly, equally, consistently, and with justice, in accordance with the equal protection and due process provisions of state and federal laws and the Town's legally constituted comprehensive planning process.

Section 7.02 Appointment of the Code Enforcement Officer (CEO)

This Zoning Ordinance shall be administered and enforced by a Code Enforcement Officer who shall be appointed by the Town Board. The Code Enforcement Officer shall administer the provisions of this Ordinance and shall have all administrative powers in connection therewith which are not specifically assigned to some other officer or body. He shall have no power to vary or waive the requirements of this Ordinance.

Section 7.03 Duties of the Code Enforcement Officer

(A) Review and Approval. The Code Enforcement Officer shall:

- (1) Have the power to review and approve all applications for a Building and Zoning Permit, Certificate of Occupancy, and Certificate of Compliance. No Building and Zoning Permit, Certificate of Occupancy or Certificate of Compliance shall be issued by him/her except where all the provisions of this Ordinance have been complied with.
- (2) As may be requested, review and make recommendations to the Planning Board, Zoning Board of Appeals and Town Board with regard to all applications for a Special Use Permit, Site Plan approval, Subdivision approval, and Planned Development (P-D) approval.
- (3) Review permits for proposed developments to ensure that all necessary permits have been obtained from those federal, state, county, or local government agencies from which prior approval is required.
- (4) As necessary, review proposed developments for compliance with the provisions of Town of Allegany Local Law No. 1-1987 entitled "A Local Law for Flood Damage Prevention."
- (5) **Temporary Permits.** The Code Enforcement Officer may issue a temporary use permit for the uses described in Section 5.02 of Article V in this Ordinance, in accordance therewith. The CEO may also issue other temporary permits as described in this Ordinance, in accordance with the regulations of the pertinent section.

- (B) **Report to Town Board.** The Code Enforcement Officer shall give a monthly report to the Town Board describing and enumerating all zoning actions that have been taken and all permits that have been issued.
- (C) **Inspection.** The Code Enforcement Officer shall be responsible for the overall inspection of all site improvements including coordination with the Planning Board, the Zoning Board of Appeals, the Town Board and other officials and agencies, as appropriate.
- (D) **Supervision.** The Code Enforcement Officer shall coordinate all zoning procedures and requirements with Town officials and agencies that are involved in matters that affect Town zoning.
- (E) **Referrals of Applications.** The Code Enforcement Officer shall make the following referrals, including all information submitted with the applications:
- (1) All applications for Special Use Permit, Site Plan approval, and Subdivision approval shall be referred to the Planning Board for its action.
 - (2) All applications for Zoning Amendments and Planned Development (P-D) Districts shall be referred to the Town Board.
 - (3) All applications for variances and all requests for interpretations of this Ordinance shall be referred to the Zoning Board of Appeals.
- (F) **Enforcement.** The Code Enforcement Officer shall have the authority to investigate and enforce alleged or suspected violations of this Zoning Ordinance, as described in Article X, Enforcement, Penalties and Other Remedies.
- (G) **Public Record.** The Code Enforcement Officer shall keep a complete file of all applications, permits, orders, certificates, requirements and decisions affecting each and every application filed with the Town pursuant to his/her duties under this Ordinance. It shall be his/her responsibility to ensure that a complete public record of all zoning actions is available, including approvals and denials for Building Permits.

Section 7.04 Procedures for Obtaining a Building and Zoning Permit, Certificate of Occupancy and Certificate of Compliance

- (A) **Relationship Between Zoning and the Uniform Code.** The Zoning Ordinance provides regulations relating to land use, location, bulk and coverage of structures. The New York State Uniform Fire Prevention and Building Code provides regulations concerning structural content and fire safety. This Zoning Ordinance complements the Uniform Code.

(B) Building and Zoning Permit

- (1) ***Applicability and Intent of a Building and Zoning Permit.*** The provisions of this Ordinance shall control the issuance of the Building and Zoning Permit. This permit certifies that the proposed use is appropriate for its class of use and geographic location, as defined in the Zoning Ordinance, and does not violate any of the provisions of this Ordinance, in addition to compliance with NYS Uniform Fire Prevention and Building Code requirements.
- (2) ***Application.*** All persons desiring to undertake any new construction, structural alterations, or changes in the use of a building or lot shall apply to the Code Enforcement Officer for a Building and Zoning Permit.
- (3) ***Information Necessary for Application.*** All applications for a Building and Zoning Permit shall include two copies of a layout or plot plan drawn to an indicated scale with north arrow, showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, with all front, rear and side yard measurements clearly indicated, and the nature and definite purpose of the building or use, and such other information as may be necessary to determine that the proposal complies with the provisions of this Ordinance.
- (4) ***Criteria for issuance of a Building and Zoning Permit***
 - (a) **Adjoining Properties Not Included.** A Building and Zoning Permit shall not be issued where it appears that any land area required to conform to any provision of this Ordinance is also required as a part of any adjoining property to keep the development or use thereof in conformity with this Ordinance, or to keep it from becoming more nonconforming, if such land area was, at any time subsequent to the commencement of development or use of such adjoining property, in common ownership with such adjoining property.
 - (b) **Water Supply and Sewage Disposal.** All water supply and sewage disposal installations and systems shall conform with New York State and Cattaraugus County Health Department regulations. No Building and Zoning Permit shall be issued by the Code Enforcement Officer unless such system is approved by the Cattaraugus County Health Department, where required.
 - (c) **Drainage.** Drainage affecting adjacent properties shall be considered by the Code Enforcement Officer before issuing a Building and Zoning Permit.
 - (d) **Zoning Ordinance.** The Code Enforcement Officer shall not issue a Building and Zoning Permit unless such use or structure complies with the provisions of this Ordinance.

- (5) **Decision.** The Code Enforcement Officer shall review the application for Zoning Permit and issue a determination within a reasonable timeframe from the date of receipt of a complete application.
- (a) **Issuance of Permit.** If the Code Enforcement Officer determines that all requirements of this Ordinance are satisfied, or upon order by the Planning Board or Zoning Board of Appeals, the Code Enforcement Officer shall issue a Building and Zoning Permit, provided that all other reviews and actions, if any are called for in this Ordinance, have been complied with and all necessary approvals have been obtained.
- (b) **Referral of Permit.** If the Code Enforcement Officer determines that the proposed project requires a Special Use Permit and/or Site Plan Review, he/she shall refer the application to the Planning Board and shall so notify the applicant. In this instance the Code Enforcement Officer shall take no action on the Building and Zoning Permit application until the Planning Board has made a determination and notified the Code Enforcement Officer of that determination. That notification shall include a copy of the Planning Board's Notice of Decision, which shall contain all conditions of approval, if any. Applicable conditions of approval shall be satisfied prior to the issuance of the Building and Zoning Permit.
- (c) **Denial of Permit.** When the Code Enforcement Officer is not satisfied that the applicant's proposed development will meet the requirements of this Ordinance, he/she shall deny the application for a Building and Zoning Permit. The applicant may appeal the CEO's decision to the Zoning Board of Appeals.
- (6) **Notification.** After a Building and Zoning Permit is issued or denied, one copy of the Permit, or letter of denial, shall be sent to the applicant. The application and a copy of the decision shall be retained by the Code Enforcement Officer and shall become a public record.
- (7) **Expiration of Zoning Permit.** A Building and Zoning Permit shall expire one (1) year from date of issuance, if the applicant fails to start action on the project.
- (8) **Commencement of Action.** The applicant shall keep a copy of the Building and Zoning Permit conspicuously displayed on the premises whenever construction work is being performed. No owner, contractor, workman or other person shall perform any building operations of any kind unless a Building and Zoning Permit covering such operation is displayed, nor shall they perform building operations of any kind after notification of the revocation of said Building and Zoning Permit.
- (9) **Revocation of Permits.** If it shall appear, at any time, to the Code Enforcement Officer that the application or accompanying plot is in any material respect false or misleading, or that the work being done upon the premises is materially different from that called for in the application, he may revoke the Building and Zoning Permit,

whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to the Code Enforcement Officer. After the Building and Zoning Permit has been revoked, the Code Enforcement Officer, in his discretion, before issuing a new Permit, may require the applicant to file an indemnity bond in the favor of the Town with sufficient surety conditioned for compliance with this Ordinance and all building laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building if it does not so comply.

(C) Certificate of Occupancy or Certificate of Compliance

- (1) Upon completion of the construction or other action permitted in the Building and Zoning Permit, the applicant shall apply to the Code Enforcement Officer for a Certificate of Occupancy or a Certificate of Compliance. No premises shall be occupied until either a Certificate of Occupancy or a Certificate of Compliance has been issued.
- (2) Where the action permitted by the Building and Zoning Permit results in occupancy of a building, the applicant shall apply for a Certificate of Occupancy. Upon a determination by the Code Enforcement Officer that the project, as completed, complies with the Building and Zoning Permit, he/she shall issue the Certificate of Occupancy.
- (3) Where the action permitted by the Building and Zoning Permit does not result in the occupancy of a building (for example, a cell tower), the applicant shall apply for a Certificate of Compliance. Upon a determination by the Code Enforcement Officer that the project, as completed, complies with the Building and Zoning Permit, he/she shall issue the Certificate of Compliance.
- (4) The issuance of a Certificate of Occupancy or a Certificate of Compliance certifies that all the applicable requirements of the Zoning Ordinance have been met, including site features on a site plan approved by the Planning Board and any conditions of approval imposed by the Zoning Board of Appeals and/or the Planning Board and that all applicable requirements of the NYS Uniform Fire Prevention and Building Code have been met.

Section 7.05 Planning Board

(A) Creation. The Town Board has heretofore appointed a Town Planning Board in accordance with Article 16 of the Town Law.

(B) Membership and Organization

- (1) The Planning Board shall consist of five (5) members.
- (2) The terms of office shall be five (5) years. All appointments thereafter shall be for terms of five years, beginning with the expiration of each previous member's appointment. All terms of office shall expire at the end of the calendar year.
- (3) If a vacancy shall occur otherwise than by expiration of term, the new member shall be appointed for the unexpired term.
- (4) No member of the Planning Board shall hold other elective or appointive office in the Town government.
- (5) The Town Board shall annually designate a chairperson from the Planning Board members to serve for one year or the remaining term of office.
- (6) The members of the Planning Board shall be removable for cause by the Town Board, upon written charges and after public hearing.

(C) Powers and Duties. The Planning Board shall have the authority to perform the following duties:

- (1) Prepare and develop a comprehensive plan for the Town of Allegany, including but not limited to recommending improvements and amendments to the Town's adopted comprehensive plan. The Planning Board shall have the authority to make investigations and prepare maps, reports and recommendations in any matter related to planning and development as it deems desirable, providing that expenditures of the Planning Board do not exceed appropriations. The Planning Board shall work in cooperation with the Code Enforcement Officer, the Zoning Board of Appeals, the Town Board, community groups and private sector organizations, and other local, state and federal agencies as may be necessary to secure successful results in the comprehensive planning process.
- (2) Study and review plans, programs or projects with respect to all matters related to the planning and development of the Town, the regulation of land use within the Town, housing development, conservation of the environment, capital programming, and economic development.

- (3) Study and report to the Town Board with respect to plans, programs and projects that may be referred to it by the Town Board and submit a report within such time as the Town Board may prescribe.
- (4) Review and decide upon each application for a Special Use Permit, as authorized in Article VIII of this Ordinance.
- (5) Review and decide upon each application for Site Plan, as authorized by Article IX of this Ordinance.
- (6) Review and decide upon each application for Subdivision, as authorized by the Land Division Regulations of the Town of Allegany. Pursuant to Section 278 of New York Town Law, the Planning Board is authorized to approve a cluster development simultaneously with the approval of a subdivision plat.
- (7) Review and make a recommendation, upon referral from the Town Board, for any proposed Planned Development (P-D) District and associated Development Plan, as authorized in Article IV of this Ordinance.
- (8) Review and comment on all proposed zoning amendments, as authorized by Article XI of this Ordinance.
- (9) Review and make a recommendation, upon referral from the Town Board, for any applications for Incentive Zoning, as authorized in Section 1.09 of this Ordinance.
- (10) Render assistance to the Zoning Board of Appeals at its request.

(D) Procedure and Operations

- (1) The Planning Board, subject to the provisions of Town Law and this Ordinance, may adopt written rules of procedure, by-laws, and forms as it may deem necessary for the proper execution of its duties.
- (2) The Planning Board in its operations shall incorporate the following procedures:
 - (a) The Planning Board shall convene on a regular monthly meeting date, and may hold special meetings as needed to conduct business in a timely manner.
 - (b) The Planning Board shall report monthly to the Town Board on all Planning Board business.
 - (c) The Planning Board may call upon any department, agency, employee of or consultant to the Town for any assistance as shall be deemed necessary and as shall be authorized by the Town Board.

- (d) Documentation of Proceedings. The Planning Board shall keep minutes of each of its meetings. The minutes shall contain written findings for each decision, describing the factors considered by the Board in reaching its decision and showing the vote of each member on every application. If a member is absent or abstains from voting the minutes shall indicate such fact. The Planning Board shall approve the minutes and file them with the Town Clerk.
- (e) Quorum and Majority Vote. A quorum shall consist of three members of the five-member Planning Board. Three votes shall be necessary to decide in favor of any applicant or upon any matter upon which said Board is required to pass under the provisions of this Ordinance.
- (f) Each member present at any meeting of the Board shall have a vote on every question brought before the Board for its consideration.

Section 7.06 Zoning Board of Appeals

(A) Organization

- (1) The Town Board, Town of Allegany, pursuant to the provisions of the Town Law applicable thereto, appointed on January 6, 1971, a Zoning Board of Appeals consisting of five members. The terms of office shall be five years. All terms of office shall expire at the end of the calendar year.
- (2) If a vacancy shall occur otherwise than by expiration of term, the new member shall be appointed for the unexpired term.
- (3) No member of the Board of Appeals shall hold other elective or appointive office in the Town government.
- (4) The Town Board shall annually designate a chairperson from the ZBA members to serve for one year or the remaining term of office.
- (5) The members of the Board of Appeals shall be removable for cause by the Town Board, upon written charges and after public hearing.
- (6) The Board of Appeals, subject to the provisions of Town Law and this Ordinance, may adopt written rules of procedure, by-laws, and forms as it may deem necessary for the proper execution of its duties. The Board of Appeals may call upon any department, agency, employee of or consultant to the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board.
- (7) The Board of Appeals shall keep minutes of each of its meetings. The minutes shall contain written findings for each decision, describing the factors considered by the Board in reaching its decision and showing the vote of each member on every

application. If a member is absent or abstains from voting the minutes shall indicate such fact. The Board of Appeals shall approve the minutes and file them with the Town Clerk.

- (8) Quorum and Majority Vote. A quorum shall consist of three members of the five-member Board. Three votes shall be necessary to decide in favor of any applicant or upon any matter upon which said Board is required to pass under the provisions of this Ordinance.
- (9) Each member present at any meeting of the Board shall have a vote on every question brought before the Board for its consideration.

(B) Powers and Duties

Without limiting the powers with which the Board is vested by Sections 267, 267-a or 267-b of the Town Law, the Zoning Board of Appeals shall have the power and authority to hear and decide appeals from, and review any order, requirement, decision, or interpretation made by the Code Enforcement Officer.

(1) *Interpretation*

- (a) The Zoning Board of Appeals shall have the power and authority to decide any question involving the interpretation of any provision of this Ordinance.
- (b) The Zoning Board of Appeals shall have the power and authority to decide the exact location of any zoning district boundary if there is uncertainty with respect thereto. In making this determination, the Board shall rely upon the provisions contained in Article III of this Ordinance.
- (c) Pursuant to Section 4.02(B) of this Ordinance, The Zoning Board of Appeals shall have the power and authority to determine whether a particular land use is allowed as a permitted or special permitted use. That determination will be based upon whether a use is similar to uses permitted in Section 4.02, Schedule A, using the criteria below. This determination shall be considered as an interpretation of the use regulations of the district and not as a variance applying to a particular situation. Any use found similar shall thereafter be included in the enumeration of uses permitted by right or as special permitted uses. In making a determination that a use is similar, the Zoning Board of Appeals shall first determine that:
 - i. The use is not listed in any other classification of permitted or special uses.
 - ii. The use is similar in nature and scale to the Permitted and Special Permitted uses that are listed in Schedule A, Section 4.02 and conforms to the basic characteristics of the classification to which it is to be added.

- iii. The use does not create dangers to health and safety and does not create offensive noise, vibration, waste material, dust, heat, smoke, odor, glare or other objectionable influences to an extent greater than those resulting from other uses listed in the classification to which it is to be added.
- iv. The use does not create traffic volumes to a greater extent than the other uses listed in the classification to which it is to be added.

(2) *Use Variances*

- (a) The Zoning Board of Appeals, on appeal from the decision or determination of the Code Enforcement Officer, shall have the power to grant use variances.
- (b) No such use variance shall be granted by the Zoning Board of Appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located that:
 - i. the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
 - ii. that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and
 - iii. that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - iv. that the alleged hardship has not been self-created.
- (c) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(3) *Area Variances*

- (a) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the Code Enforcement Officer, to grant area variances.
- (b) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or

community by such grant. In making such determination the Zoning Board of Appeals shall also consider:

- i. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
 - ii. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
 - iii. Whether the requested area variance is substantial;
 - iv. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district;
 - v. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Zoning Board of Appeals, but shall not necessarily preclude the granting of the area variance.
- (c) If the Zoning Board of Appeals, in its discretion, shall grant an area variance, it shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (4) ***Imposition of conditions.*** The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intention of this Ordinance and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.
- (5) ***Revocation.*** After a hearing, the Zoning Board of Appeals may revoke any decision to grant a use or area variance, if the current owner or operator fails to comply with any conditions of approval. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the failure to comply as a violation in accordance with Article X of this Ordinance.

(C) Procedure for Appeals

- (1) Each order, requirement, decision, interpretation or determination of the Code Enforcement Officer shall be filed, in writing, in his/her office within five business days from the day it is rendered, and shall be a public record.
- (2) Any party aggrieved by a decision of the Code Enforcement Officer shall have sixty (60) days after the filing of such order, requirement, decision, interpretation or determination to file an appeal with the Zoning Board of Appeals.

- (3) All appeals and applications made to the Zoning Board of Appeals shall be in writing, on forms prescribed by said Board. Every appeal or application shall refer to the specific provision of the Ordinance involved, and shall exactly set forth the interpretation that is claimed, or the details of the variance that is applied for, and the grounds on which it is claimed that the variance should be granted.
- (4) Within 62 days after receipt of a complete application for an appeal or request for interpretation, the Zoning Board of Appeals shall hold a public hearing on the matter. At the hearing, any person may appear in person, by agent or by attorney. Notice of the public hearing shall be provided in the following manner:
 - (a) ***For all variances and interpretations***, the Town shall publish the notice of public hearing in the Town's official newspaper at least five (5) days prior to the date scheduled for the public hearing.
 - (b) For a ***use variance and for an area variance***, the Town shall mail notices of the public hearing to the owners of all lands within a radius of five hundred (500) feet of the perimeter of the property for which the variance is being requested. Such notices shall be mailed to the property owner of record at the address shown on the current tax assessment roll and shall be postmarked at least 10 days prior to the date scheduled for the public hearing.
 - (c) For all appeals that meet the requirements contained in Section 239-m of the General Municipal law, the Town shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least five (5) days prior to the hearing.
- (5) The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days after the close of the hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.
- (6) Every decision of the Zoning Board of Appeals shall be by resolution, each of which shall contain a full record of said Board in the particular case.
- (7) Every decision of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is made and shall be a public record. A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant within five (5) business days of the decision.

(D) Expiration of Grant of Variance

- (1) A variance shall expire one (1) year from the date of approval if a building permit has not been issued or if use of the property in accordance with the grant of variance has not commenced, in cases where a building permit is not needed. The Zoning Board of

Appeals may grant an extension of the variance for up to one additional year when the applicant is able to demonstrate a legitimate need to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors. The applicant shall apply to the Zoning Board of Appeals for such extension, prior to the expiration of the grant of variance. The extension of the grant of variance is deemed to be a *de minimus* action that does not require a public hearing. However, the Board of Appeals may choose to hold a public hearing prior to any such extension of the grant of variance.

- (2) A use variance shall expire if the use of the property in accordance with the grant of a variance shall cease continuously for one (1) year.
- (3) Nothing in this section shall be construed to prohibit the Zoning Board of Appeals from requiring, as a condition of approval, that a variance be renewed periodically.

Section 7.07 Mandatory Referrals to County Planning Board

(A) Applicability

- (1) In accordance with the laws of New York State, all proposed comprehensive plans, zoning regulations, special use permits, site plans, use variances and area variances, and amendments thereto, shall be referred to the Cattaraugus County Planning Board for its review and comment prior to final action by the local Board, whenever such proposed action applies to real property that is located within five hundred (500) feet of the following features:
 - (a) the boundary of any city, village, or town
 - (b) the boundary of any existing or proposed county or state park or any other recreation area
 - (c) the right-of-way of any existing or proposed County or State parkway, thruway, expressway, road or highway
 - (d) the existing or proposed right-of-way of any stream or drainage channel owned by the county or for which the county has established channel lines
 - (e) the existing or proposed boundary of any County or State-owned land on which a public building or institution is situated
 - (f) the boundary of a farm operation located in an agricultural district, as defined by Article twenty-five-AA of the agriculture and markets law, except that this requirement shall not apply to area variances.
- (2) Notwithstanding the above sub-section, an application need not be referred to the

County Planning Board if it is exempt from referral pursuant to the *Referral Exemption Agreement between Cattaraugus County Planning Board and the Town of Allegany*, dated March 7, 2013. (See Appendix A).

(B) County Review. The Cattaraugus County Planning Board shall have thirty (30) days from date of County receipt to take action on the matter. By mutual agreement of the County and Town, such 30-day period may be extended in special cases.

(C) Effect of County Planning Board Review

- (1) If the County Planning Board has no objection to a referred action, then the decision of the Town Board, Zoning Board of Appeals or Planning Board shall be governed by a majority vote.
- (2) If the County disapproves or approves subject to stated conditions or modifications, the Town Board, Planning Board or Zoning Board of Appeals may override the County determination only by a majority plus one vote.

(D) Report on Final Local Action. The Town Board, Zoning Board of Appeals, or Planning Board shall send to the County Planning Board a copy of its final decision and reasons for such decision on a referred action within thirty (30) days after the local decision is reached.

Section 7.08 State Environmental Quality Review (SEQR)

All applications for approvals pursuant to this Zoning Ordinance shall be subject to the requirements of the New York State Environmental Quality Review Act (Article 8 of the Environmental Conservation Law), and the New York State rules and regulations which implement the Act, known as Part 617 of Title 6 of the New York State Code of Rules and Regulations.

ARTICLE VIII SPECIAL USE PERMITS

Section 8.01 Intent and Purpose

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

The function of Special Use Permits is to accept certain uses only upon compliance with specific standards that are presented herein, in addition to all other requirements of this Ordinance. All such uses are hereby declared to possess characteristics of such unique and special forms that each specific use shall be considered as an individual case for the particular district in which it is located.

Section 8.02 Applicability and Authority

- (A) The Planning Board is hereby authorized to hear and decide all applications for Special Use Permits for uses that are so listed in this Ordinance.
- (1) A Building and Zoning Permit shall not be issued by the Code Enforcement Officer for any use listed in Article IV, Section 4.02, Schedule A or elsewhere in this Ordinance as uses requiring a Special Use Permit, unless and until the Planning Board approves a Special Use Permit in accordance with the provisions of this Article.
 - (2) After evaluating the application for Special Use Permit using the standards established in this Article and considering the intent and purpose of this Ordinance and the Town's Comprehensive Plan, the Planning Board may approve, approve with conditions, or deny the application for Special Use Permit.
 - (3) If the application is approved, the Planning Board may impose any reasonable conditions necessary to preserve the character of the neighborhood and/or to mitigate potential impacts to the neighborhood, to the Town as a whole, or to the environment.
 - (4) The Planning 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. If a Temporary Special Use Permit is to be renewed, such renewal shall be subject to the same procedure as specified herein for the original issuance of the Special Use Permit.

- (B) Where a proposed special use permit contains one or more features which do not comply with the zoning regulations, an application may be made to the Zoning Board of Appeals for an area variance without the necessity for an application to and permit denial by the Code Enforcement Officer. The Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for the Special Use permit.

Section 8.03 Application Procedure

- (A) **Submission of Application.** The applicant shall submit a completed application for a Special Use Permit to the Code Enforcement Officer, who shall forward it to the Planning Board.
- (B) **Application Content.** The application shall contain the following information and materials:
- (1) An application for zoning permit.
 - (2) Name, address and contact information for the applicant and the applicant's representative(s), if any. In the event that the property owner is not the applicant, a letter from the property owner giving the applicant permission to make the application shall be required.
 - (3) A map, with north arrow and scale, identifying the site in relation to adjoining public roads and the neighborhood in which it is located. The address and tax map number of the project site shall be provided.
 - (4) Application for Site Plan Review, unless the proposed use is exempt from Site Plan Review pursuant to Section 9.02 of these regulations.
 - (5) Written narrative describing the proposed project, including the nature of the use, proposed development schedule, and other pertinent information.
 - (6) Part 1 of NYSEQRA Environmental Assessment Form
 - (7) Application fee
 - (8) Any additional information that may be required by the Planning Board as it deems necessary and pertinent to carry out its responsibility for a meaningful review of the Special Use Permit application, based on the nature of the project and/or site. The Planning Board may waive any of the above submission requirement(s) that the Board deems unnecessary for a meaningful review of a particular project.

(C) Planning Board Review

- (1) **Public Hearing.** The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date the complete application is received. The Planning Board shall determine when the application is complete.
- (2) **Public Notice.** Notice of the public hearing shall be provided in the following manner:
 - (a) The Town shall publish a notice of the public hearing in the official newspaper of the Town, at least five (5) days before the public hearing, and
 - (b) The Town shall mail notice of the public hearing to the applicant, at least 10 days before the hearing, and
 - (c) The Town shall mail notice of the public hearing to owners of all properties within a radius of five hundred (500) feet of the perimeter of the property for which the Special Use Permit is being requested. Such notices shall be mailed to the property owner of record at the address shown on the current tax assessment roll and shall be postmarked at least 10 days prior to the date scheduled for the public hearing.
 - (d) If the application is subject to the referral requirements of Section 239-m of General Municipal Law, notice of the public hearing shall be sent to the Cattaraugus County Planning Board at least 10 days before the hearing.
- (3) **Decision.** Within sixty-two (62) days after the close of the public hearing, the Planning Board shall render its decision on the Special Use Permit application, taking into consideration the standards contained in Section 8.04 of this Ordinance. The timeframe within which the Planning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.
- (4) **Filing of Decision**
 - (a) Within five (5) business days after the Planning Board renders its decision, the decision shall be filed in the office of the Town Clerk.
 - (b) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be mailed to the applicant. If the application is denied, the notice of the decision shall include the reasons for the denial.
 - (c) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be provided to the Code Enforcement Officer.
- (5) **Expiration of Approval**
 - (a) If construction has not commenced within one (1) year from the date of the grant of Special Use Permit, that approval shall expire and shall be deemed revoked. Extensions may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the approval shall expire one year from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.

- (b) A Special Use Permit shall expire if the use of the property in accordance with the grant of a Special Use Permit shall cease continuously for one (1) year.

(6) ***Amendments to Special Use Permits***

- (a) The grant of Special Use Permit shall authorize only the particular special use for which the permit was granted. Any extension, enlargement, or change in use shall require the property owner to apply to the Planning Board for an amendment to the Special Use Permit.
- (b) However, an amendment to the Special Use Permit shall not be required if (1) such use is listed as a permitted (as-of-right) use in the zoning district in which the lot is located in Article IV, Section 4.02, Schedule A, or (2) such use is determined by the Zoning Board of Appeals to be substantially the same as the use for which a Special Use permit has already been issued and continues to be in effect.
- (c) The Planning Board shall treat the amendment as a new application and shall follow the review and approval process for Special Use Permits that is contained in this Article.

(7) ***Abandoned Application***

- (a) If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Planning Board, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.
- (b) "No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Zoning Ordinance or by the requirements of the State Environmental Quality Review Act (SEQRA).
- (c) Prior to deeming the application "abandoned" the Planning Board shall contact the applicant and provide him/her with an opportunity to explain the reason for the delay. At the Planning Board's discretion, the Board may extend the time period for the requested application materials.

- (8) ***Revocation of Special Use Permit.*** The Planning Board shall have the authority to revoke the Special Use Permit, after a public hearing, if the current owner or operator fails to comply with any condition(s) of approval of the application or conducts the land use in a manner contrary to the description in the application, and/or conducts the land use in a manner contrary to the regulations of this Zoning Ordinance. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the violation in accordance with Article X of this Zoning Ordinance.

Section 8.04 Standards for Approval

- (A) When making a decision to approve, approve with conditions, or deny a Special Use Permit, the Planning Board shall consider the standards in this section. The Planning Board shall not grant, renew or amend any Special Use Permit unless the Board finds that the proposed project complies with all these standards, and/or the project can be modified or conditioned to bring it into compliance with the standards. In this latter case, conditions of approval or modifications to the proposal shall be incorporated into the approved Special Use Permit.
- (B) In approving a Special Use Permit, the Planning Board shall find that the project complies with all of the following standards:
- (1) The use is consistent with the intent and objectives of the Town of Allegany Comprehensive Plan.
 - (2) The use is consistent with the intent and objectives of this Ordinance and complies with all applicable regulations in this Ordinance.
 - (3) The use will not alter the essential character of the neighborhood in which it is located.
 - (a) A special use shall not be more objectionable to nearby properties than would be the operation of any permitted use that would be allowed in the district.
 - (b) The use is of such character, size and location that in general it will be in harmony with the area in which the property is situated.
 - (c) The use will not tend to depreciate the value of adjacent property.
 - (4) The use will not hinder the normal development of the district in which it is located or of adjacent districts.
 - (5) The use will not create a hazard to the public health, safety or general welfare of the community.
 - (a) Adequate services and utilities will be available to the site prior to occupancy.
 - (b) The use will not generate vehicular traffic that would be hazardous to pedestrians or vehicles or unduly impact public roadways.
 - (c) The use will not generate noise, dust, light, or other impacts that will impair the use, enjoyment and value of adjacent land and buildings.

ARTICLE IX SITE PLAN REVIEW

Section 9.01 Purpose

The purpose of this Article is to ensure that any new development, substantial redevelopment, special permitted use, or change in use in the Town will be in harmony with the character of the neighborhood in which it is proposed to be located. Another purpose is to minimize conflicts between proposed development and neighboring existing uses and natural features of the site, in order to ensure the optimum overall conservation, protection, preservation, development, design and use of natural and man-related resources in the Town. To accomplish these goals, this Article sets forth the applicability, process and standards for the review of Site Plans.

Section 9.02 Applicability and Exceptions

- (A) All new development; all redevelopment; all land use activities; all changes in use, regardless of whether or not construction activities are involved; and all special use permit applications shall require Site Plan review and approval prior to the issuance of a building permit and/or zoning permit, except the following:
- (1) Construction of single family or two-family dwelling units and ordinary accessory structures, and related land use activities. Additions of any size to existing single family and two family dwelling units are also exempt from site plan review.
 - (2) Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this Zoning Ordinance.
 - (3) Ordinary repair or maintenance to existing structures, in cases where the use remains the same.
 - (4) Interior structural alterations within any existing building, in cases where the use remains the same.
 - (5) Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than 25%, or additions of less than 5,000 square feet, whichever is the lesser, in cases where the use remains the same.
 - (6) Agricultural uses as defined in Article II of this Ordinance, including the construction of buildings and structures that are normally accessory to agricultural uses. Gardening uses not involving commercial use.
 - (7) The sale of agricultural produce and temporary structures related to sale of agricultural produce.

- (8) Logging and timber cutting.
 - (9) Home Occupations.
 - (10) Accessory structures, including fences, unless the fence or other accessory structure is part of a project that is subject to site plan review.
 - (11) Signs, except for signs that are included in projects that would otherwise require site plan review. Billboards and Outdoor Advertising Signs are exempt from site plan review.
- (B)** Notwithstanding the foregoing sub-section, any exterior alterations to commercial and/or industrial buildings, which are located within the CO-1 Route 417 East Corridor Overlay District and the CO-2 Route 417 West Corridor Overlay District, that will significantly change the architectural appearance of those structures, regardless of whether there will be an increase in building size, shall require Site Plan review and approval prior to the issuance of a building permit and/or zoning permit.
- (C)** Any person uncertain of the applicability of Site Plan Review to a given land use activity may apply in writing to the Planning Board through the Code Enforcement Officer for a written jurisdictional determination.

Section 9.03 Authority

- (A)** The power to approve, approve with conditions, or disapprove site plans is hereby vested in the Planning Board of the Town of Allegany.
- (B) Area Variances.** Where a proposed site plan contains one or more features which do not comply with the zoning regulations, an application may be made to the Zoning Board of Appeals for an area variance without the necessity for an application to and permit denial by the Code Enforcement Officer, provided that the application for site plan review is made simultaneous with or prior to the application to the Zoning Board of Appeals. The Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for Site Plan review.
- (C) Integration of Procedures.** Whenever a proposed development requires either a Special Use Permit or other permits issued by the Town, in addition to Site Plan review, the Planning Board shall attempt to integrate, as appropriate, the Site Plan review process with the procedural and submission requirements for such other permits and procedures.

Section 9.04 Application Content

- (A)** The application for Site Plan review shall be made in writing to the Planning Board by filing it with the Code Enforcement Officer. Where a pre-application conference was held with the Planning Board (See Section 9.06(A)), the application shall contain the material requested by the Planning Board at that time. The Site Plan that is submitted for approval

shall be prepared by and show the signature and/or seal of a licensed engineer, architect, landscape architect, or surveyor. All maps shall contain a scale, north arrow, date, title, and the name and address of the preparer.

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

- (1) Name, address and contact information for the applicant and the applicant's representative(s), if any. In the event that the property owner is not the applicant, a letter from the property owner giving the applicant permission to make the application shall be required.
- (2) A map, with north arrow and scale, identifying the site in relation to adjoining public roads and the neighborhood in which it is located. The address and tax map number of the project site shall be provided.
- (3) A scaled map (or maps) of the site, with a north arrow and date, showing existing site conditions, prior to demolition of any existing structures and any grading. The map(s) shall be at a size and scale adequate to show site conditions. The map(s) shall show:
 - (a) The boundaries of the site and the lot size (area).
 - (b) Any easements of record or known prescriptive easements
 - (c) Topography with contours shown at intervals of not more than five feet
 - (d) Type and location of major trees or significant areas of vegetation
 - (e) One hundred year floodplain, known springs and seep areas, ponds, wetlands, and streams
 - (f) Existing roads, fences, and drainage facilities
 - (g) Location of public utility facilities and associated easements.
- (4) Proposed Site Plan, on one or more scaled maps, with a north arrow and date. The map(s) shall be at a size and scale adequate to show proposed site features and structures. The site plan shall show:
 - a. Required yard setbacks, from the Zoning Ordinance.
 - b. Location and proposed use of all buildings and structures
 - c. Location of all proposed site improvements, such as plazas, tennis courts, pools, and similar facilities
 - d. Driveways, parking areas, new and existing roads and any other circulation features, including access to existing public roads
 - e. Pedestrian circulation system, including proposed sidewalks and crosswalks.
 - f. Proposed location of new (or existing) utility services or relocated utility services, including easements, if necessary.
 - g. Location of outdoor storage, if any.
 - h. Location of garbage dumpsters, loading docks, stacking lanes, and similar features.
 - i. Location and proposed use of open space and/or recreation areas, if any. The proposed ownership and the parties responsible for long-term maintenance of these areas shall be identified.

- (5) Drainage and Grading Plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater, stormwater runoff management plan, and proposed erosion control measures (a Stormwater Pollution Prevention Plan prepared in accordance with NYSDEC regulations shall be adequate to meet this requirement).
- (6) Proposed water supply plan, including location of new waterlines, if proposed; location of tie-in to existing water system; design and construction materials of public facilities; and location of fire lanes and hydrants. A description and explanation of the system should be included, if necessary.
- (7) Proposed sanitary sewerage disposal system including location of new lines, if proposed; location of tie-in to existing system; and design and construction materials of public facilities. A description and explanation of the system should be included, if necessary.
- (8) To-scale floor plans and elevations of proposed buildings and structures, showing all architectural features, including design, colors, materials, and height. For large-scale projects the Planning Board may require renderings showing the proposed project in relationship to adjacent properties.
- (9) Landscaping Plan, including planting schedule. The Landscaping Plan shall show all proposed fences and/or retaining walls, including height and construction materials. The Landscaping Plan shall include proposals for buffer areas, if any.
- (10) Lighting Plan, including the location, height and design of outdoor lighting features. The lighting plan shall include a description of the lighting level, (measured in footcandles or other standard approved by the Planning Board) at all locations on the site, through photometric drawings or similar mapping techniques.
- (11) Signage Plan, including the location, design, color, materials and size of all proposed signs.
- (12) Location, design and construction materials of all energy distribution facilities, including electrical, gas, oil, solar and wind energy, if any.
- (13) General description of proposed project, including the nature of the use, number of shifts, potential number of employees, hours of operation, etc.
- (14) A development schedule for the project, indicating phased development, if any, and the estimated start and completion dates for the project.
- (15) Part 1 of NYSEQRA Environmental Assessment Form.
- (16) All Application Fees.

- (17) Any additional information that may be required by the Planning Board as it deems necessary and pertinent to carry out its responsibility for a meaningful review of the Site Plan application, based on the nature of the project and/or site. The Planning Board may waive any of the above submission requirement(s) that the Board deems unnecessary for a meaningful review of a particular project.

Section 9.05 Criteria for Review of Site Plan

(A) General Standards. The Planning Board's review of the Site Plan shall include the following considerations:

- (1) Site Layout
 - (a) The location and size of the site is adequate to accommodate the proposed site layout.
 - (b) The site plan is compatible with the natural features of the site, such as topography and wetlands. In areas with susceptibility to ponding, flooding and/or erosion, the proposed structures, roadways and landscaping are designed to minimize impacts from those conditions.
 - (c) The location, arrangement, size, and design of buildings, lighting and signs provides a coherent, unified and consistent appearance.
 - (d) The location, nature, architectural characteristics and height of buildings, walls and fences will not discourage either future development of or current use of adjacent land and buildings, or impair their value.
 - (e) Adequate on-site parking is provided, both in terms of number of spaces and their arrangement on the lot in relationship to the buildings and/or uses that they are intended to serve.

- (2) Circulation
 - (a) The internal vehicular traffic circulation system is adequate for the activities and uses proposed, and provides adequate access to parking areas and to abutting streets, taking into consideration intersections, road widths, pavement surfaces, and traffic controls mechanisms.
 - (b) An internal pedestrian circulation system is provided
 - (c) Access to and egress from the site for both pedestrians and vehicles is adequately provided.
 - (d) Loading and unloading zones are adequate for the anticipated delivery and service vehicles, and their location does not affect other vehicular or pedestrian traffic.
 - (e) Adequate access is provided for emergency service vehicles, including adequate pavement, turning radii and fire lanes.

- (3) Utilities
 - (a) Storm water drainage facilities are adequate to mitigate anticipated runoff.
 - (b) The proposed water supply and sanitary sewage disposal systems meet the standards of the Town, NYS Department of Environmental Conservation and Cattaraugus County Health Department.

- (c) The water supply system is adequate to provide fire flow and fire hydrants are provided, if needed.
- (4) Landscaping and buffering
 - (a) The proposed Landscaping Plan complies with the standards contained in Article V of this Zoning Ordinance.
 - (b) Where a visual and/or noise buffer is required between the applicant's and adjoining lands, the type and arrangement of trees, shrubs and other landscaping features forms an adequate buffer to protect adjacent or neighboring properties against noise, glare, unsightliness or nuisances. The retention of existing vegetation to the maximum amount feasible is encouraged.
 - (c) Loading zones, trash receptacles and mechanical equipment areas are adequately screened from adjacent properties and from within the site.
 - (d) If adjacent or neighboring properties contain existing solar facilities, the proposed site plan will not adversely affect the solar access of those facilities.
 - (e) Where proposed in an apartment complex or other multiple dwelling, the open space for play areas and informal recreation is adequate.
- (5) Lighting
 - (a) The location and design of the proposed site lighting is adequate for safety and has minimal impact to adjacent properties in terms of light spillage. Site lighting shall use the minimum amount of lighting needed for safety and convenience, without being excessively bright.
 - (b) The use of cut-off or dark sky compliant light fixtures is encouraged.
 - (c) The style of light poles and fixtures is consistent with the architectural design of the development.
- (6) Signage
 - (a) The size, design, number, placement and arrangement of signs is the minimum necessary to convey the required information.
 - (b) The signage plan is consistent with the overall architectural character of the development.
 - (c) Signage meets the requirements of Article V in terms of numbers, size and location of signs.

(B) Specific Standards for Shoreline Protection

- (1) All construction on any shoreline lot shall be carried out in such a manner as to minimize interference with the natural course of such waterway, to avoid erosion of the shoreline, to minimize increased runoff of ground and surface water into the waterway, to remove only that vegetation which is necessary to the accomplishment of the project, and to generally maintain the existing aesthetic and ecological character of the shoreline.
- (2) Any marina, boat service facility or any storage of petroleum products within two hundred (200) feet or reasonable setback as determined necessary by the Planning

Board, of the shoreline shall include adequate provisions for insuring that any leak, rupture or spill will be contained and not be introduced into or affect the adjacent waterway. In particular, a raised earthen or paved berm or dike shall be constructed in such a manner so as to afford adequate protection.

- (3) Any paved or otherwise improved parking, loading or service area within two hundred (200) feet of any shoreline shall be designed and constructed so as to minimize surface runoff and the entrance of any chemical pollutants or earthen silt into the waterway.

Section 9.06 Application Procedure

(A) Pre-Application Conference

A pre-application conference may be held between the Planning Board and the applicant prior to the preparation and submission of a formal Site Plan application. The purpose of the pre-application conference is to enable the applicant to inform the Planning Board of the proposal prior to the preparation of a detailed Site Plan. The Planning Board shall review the basic site design concept, advise the applicant as to potential problems and concerns, and generally determine the information to be required for the Site Plan application. The Planning Board, upon review of the application, may require the applicant and inform them at this time to set up an escrow account for Town retainment of outside consultant services to assist in the technical review of the application in accordance with Section 9.07. If escrow is indicated as being required at this time, an application shall not be considered “complete” and provided to the Planning Board for review until escrow is established.

For the pre-application conference, in order to accomplish these objectives, the applicant should provide the following information:

- (1) A sketch showing the locations of principal and accessory structures, parking areas, and other existing and planned features. Anticipated changes in the existing topography and natural features should be identified.
- (2) A site location map that shows the location of the site with respect to nearby streets, major waterbodies, and abutting property.

(B) Optional Public Hearing

- (1) The Planning Board may conduct a public hearing on the Site Plan application. In determining whether a public hearing is warranted, the Planning Board shall consider issues such as: the size and scale of the project; the amount of traffic likely to be generated by the project; the possible impact on the surrounding area in terms of noise, light, and other nuisance and/or health factors; and whether or not the project would represent a significant change in the land use in the surrounding area. The Planning Board, by motion, shall make a formal determination of whether or not a public hearing is warranted.

- (2) If a public hearing is held, the Planning Board shall conduct such public hearing within sixty-two (62) days from the day the complete application is received.
- (3) **Public Notice.** Notice of the public hearing shall be provided in the following manner:
 - (a) The Town shall publish a notice of the public hearing in the official newspaper of the Town, at least five (5) days before the public hearing, and
 - (b) The Town shall mail notice of the public hearing to the applicant, at least 10 days before the hearing, and
 - (c) The Town shall mail notice of the public hearing to owners of all properties within a radius of five hundred (500) feet of the perimeter of the property that is the subject of the site plan application. Such notices shall be mailed to the property owner of record at the address shown on the current tax assessment roll and shall be postmarked at least 10 days prior to the date scheduled for the public hearing, and
 - (d) If the application is subject to the referral requirements of Section 239-m of General Municipal Law, notice of the public hearing shall be sent to the Cattaraugus County Planning Board at least 10 days before the hearing.

(C) Decision

- (1) If no public hearing is held, within sixty-two (62) days of receipt of a complete application the Planning Board shall render a decision to approve, approve with conditions or modifications, or disapprove the site plan application.
- (2) If a public hearing is held, the Planning Board shall render its decision within sixty-two (62) days after the close of the public hearing.
- (3) The time limit within which the Planning Board must render its decision may be extended by mutual consent of the Planning Board and the applicant.
- (4) When approving a site plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed site plan. The approval shall be conditional upon the satisfactory compliance with these conditions or modifications by the property owner and his/her agents. Any such conditions must be met in connection with the issuance of permits pertaining to the approval by the Code Enforcement Officer.
- (5) **Findings of Approval.** In making a determination to approve the Site Plan, the Planning Board shall find that the following standards are met:

- (a) The Site Plan is consistent with the intent, objectives and specific requirements of this Article, including the standards contained in Section 9.05, and with all other applicable provisions of this Zoning Ordinance.
- (b) The Site Plan is consistent with the intent and objectives of the Town of Allegany Comprehensive Plan.
- (c) Adequate services and utilities will be available prior to occupancy.
- (d) The Site Plan will not be detrimental to the public health, safety, or welfare of the community.
- (e) If the site is located within a Planned Development (P-D) District, the Site Plan is consistent with the Development Plan.

(D) Filing of Decision and Notice to the Applicant

- (1) Within five (5) business days after the Planning Board renders its decision, the decision shall be filed in the office of the Town Clerk.
- (2) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be mailed to the applicant. If the application is denied, the notice of the decision shall include the reasons for the denial.
- (3) Within five (5) business days after the Planning Board renders its decision, a copy of the decision shall be provided to the Code Enforcement Officer.

(E) Expiration of Approval

- (1) Except for site plans approved for parcels in a Planned Development (P-D) District, if construction of the approved development has not commenced within one (1) year from the date of Site Plan approval, that approval shall expire and shall be deemed revoked. Extensions of time to begin work may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the approval shall expire one year from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.
- (2) Site plans approved for parcels in a Planned Development (P-D) District (See Section 4.11 of this Zoning Ordinance) shall expire and shall be deemed revoked two (2) years from the date of the approval, if construction of the approved development has not commenced. Extensions may be granted by the Planning Board, upon written application to the Planning Board prior to the expiration of the site plan approval, for up to one additional year. The applicant shall provide an explanation why the extension is necessary. For projects for which no construction activity is needed, the

approval shall expire two years from the date of the approval, if the use of the site in accordance with the approved site plan has not commenced.

(F) Abandoned Application

- (1) If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Planning Board, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.
- (2) "No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Zoning Ordinance or by the requirements of the State Environmental Quality Review Act (SEQRA).

Section 9.07 Consultant Review

- (A) In reviewing any Site Plan, the Planning Board, Town Board, or Code Enforcement Officer may retain such engineering, planning, legal, technical and environmental consultants, or professionals ("consultant services") as deemed reasonably necessary to assist in the technical review of such applications and in the inspection and approval of any installations, infrastructure or improvements after final approval of such applications.
- (B) For applications that are unusually complex, that encompass a large area of land, and/or that may have unique or unusual features that require technical expertise beyond the threshold and capabilities of the Planning Board, Town Board, and/or Code Enforcement Officer, the Town Board, on the advice of the Planning Board, may retain professional consultant services and experts to assist the Planning Board in its the review of the application. Applications may include, but not limited to, major subdivisions, commercial or industrial development, commercial WECS, or Tier 3 Solar Energy Systems. Such consultant(s)'s fees shall be paid by the applicant (or property owner if different from the applicant), in accordance with the following procedure:
:
 - (1) If the Town Board determines that consultant services are warranted for a project, the applicant or owner shall establish and fund an escrow account to cover the anticipated costs. The escrow agreement shall provide that, if the applicant falls behind on funding of the escrow account in the amount mutually agreed upon, all work on the review of the application by Town boards and staff shall be suspended until the funds are received.
 - (2) Escrow shall be established within 30 days after submission of the application (if indicated as needed in accordance with Section 9.06A) or upon direction of the Town Board as noted in (B)(1) above.
 - (3) The escrow agreement shall identify the consultant services needed by any reviewing board/entity along with a scope of the necessary services provided. The amount shall be that which is reasonably necessary to ensure that the Town has sufficient funds to pay the cost of the necessary consultant services on a timely and continuing basis. A

minimum of \$2,000 shall be provided in a dedicated escrow account for such purposes unless a different amount is indicated by the Town Board upon receipt of a requested scope of services by said consultant(s).

- (4) Consultants providing professional services will submit monthly statements to the Town Board, outlining the services provided and the cost of those services. The cost of services provided by a consultant will be as provided in the consultant's agreement with the Town.
- (5) Upon request, the applicant may be provided with copies of payment statements submitted by the consultants for services as they are submitted to the Town. The applicant may dispute any charge by notifying the Town Supervisor of the basis for the dispute in writing within 15 days of the date the statement is sent, at which time, the Supervisor, based on the applicant's dispute reasoning and a review of the consultant services rendered in conjunction with the project, shall determine the course of action on payment.
- (6) In the event that an application is required to be reviewed by more than one reviewing board, then in such event and to the extent applicable, such reviewing boards shall use the same consultant(s), who shall in such case prepare one report providing the data, information and recommendations requested. In all instances, duplication of consultants' reports shall be avoided whenever possible in order to minimize the cost of such consultants' reports to the applicant.
- (7) When the balance in such escrow account is reduced to 1/3 of its initial amount, the Town shall advise the applicant and the applicant shall deposit additional funds into such account to bring its balance up to the amount of the initial deposit. If such amount is not replenished within 10 business days after the applicant is notified in writing of the requirement for such additional deposit, the reviewing board may suspend its review of the application.
- (8) The escrow agreement shall provide that any funds remaining at the end of the project review shall be returned to the applicant.
- (9) A building permit, certificate of occupancy, or other permit, approval or action being sought shall not be issued unless all consultant services fees charged in connection with the applicant's project have been reimbursed to the Town by the applicant.
- (10) This requirement for the payment of consultant fees shall be in addition to any charge that is made to the applicant for SEQR fees pursuant to Section 617.13 of NYS SEQRA regulations.

Section 9.08 Project Completion

- (A) The Code Enforcement Officer shall be responsible for the overall post-construction inspection of site improvements, including coordination with the Planning Board and other officials and agencies, as appropriate.
- (B) No Certificate of Occupancy or Certificate of Compliance shall be issued by the Code Enforcement Officer until all improvements shown on the Site Plan are installed or a sufficient performance bond has been posted to guarantee completion of improvements not yet made. The sufficiency of such performance guarantee shall be determined by the Town Board after consultation with the Planning Board, Town Engineer, Town Attorney and

other appropriate parties. However, the CEO may issue a temporary Certificate of Occupancy or Certificate of Compliance for projects that were not required to provide a performance bond in cases where some project features cannot be completed due to the onset of winter weather or similar issues outside of the control of the project proponent.

(C) Letter of Certification

- (1) In order to ensure that all site features of a large-scale, commercial or industrial project are completed as shown on the approved plans, at the time of such approval the Planning Board may, as a condition of approval, require the project sponsor to provide a Letter of Certification. The Letter of Certification shall be provided after completion of the project and shall meet all the requirements of this section. When required, the Code Enforcement Officer shall not issue a Certificate of Occupancy or Certificate of Compliance until the Letter of Certification has been received.

For purposes of this sub-section a large-scale project contains one or more of the following features or features that are similar in scale to those listed below:

- (a) new, privately-owned road.
 - (b) Landscaping, fencing or other buffering elements that are required as a mitigation to abutting properties.
 - (c) features intended for public use, such as sidewalk connections to off-site locations, even though they are located on private property and will be privately maintained.
 - (d) new, substantial stormwater control features that are not subject to NYSDEC's SPEDES Permit Requirements (SWPPP).
 - (e) New or substantially enlarged parking facilities
 - (f) site lighting where the Planning Board has approved a photometric plan to minimize light spillage onto abutting properties.
- (2) The Letter of Certification shall be prepared by a professional engineer, surveyor or architect, licensed in the State of New York and shall contain that professional's signature and seal/stamp.
 - (3) The Letter of Certification shall state that the project, as built, complies with the approved plans for the project. The Letter of Certification shall be accompanied by as-built plans of the site. The site features discussed in the Letter of Certification shall include non-public features such as landscaping, lighting, storm sewers and basins, sidewalks, parking lots, private roads, screening features, fencing and any other site feature approved by the Board. Features of the site covered by the Building Code shall be exempt from this provision.
 - (4) The Letter of Certification shall be provided prior to the issuance of a Certificate of Occupancy or Certificate of Compliance. However, the Planning Board may authorize the Code Enforcement Officer to issue temporary Certificates, allowing the premises to be occupied, for projects that were not required to provide a performance bond. The issuance of temporary Certificates may be warranted, for example, in cases where

the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather.

Section 9.09 Amendments to Approved Site Plan

- (A) Any change to an approved Site Plan shall require the approval of an amendment to the Site Plan by the Planning Board. An application for an amendment to the approved site plan shall include, at a minimum, a revised site plan and a letter discussing the proposed change and the necessity for that change.
- (B) Upon receipt of an application for an amendment to an approved Site Plan, the Planning Board shall determine if the amendment is a minor or major amendment. A minor amendment shall include the following and similar insignificant changes:
- (1) minor changes to the Landscaping Plan, such as a change in the types of plantings, provided the amount of buffering or landscaping is essentially the same as the approved plan
 - (2) reconfiguration of the parking lot, where the number of parking spaces does not fall below the minimum requirement
 - (3) change in location of garbage dumpsters, light poles, or similar site features, where the overall level of service will not change
 - (4) change in location of access driveway, provided that such driveway meets all the standards in the Zoning Ordinance and/or SEQR determination
 - (5) minor realignments of water supply lines, sanitary sewer lines, and storm drainage facilities that may be necessary during construction, as approved by the Town Highway Water and Sewer Superintendent and Town Engineer.
 - (6) minor changes in the locations of buildings or other site features, provided all required setbacks are maintained and there is not the potential for a greater impact to an existing neighborhood or abutters.
- Any other change to the site plan, including new buildings or the expansion of existing buildings, shall be considered a major site plan amendment.
- (C) If the Planning Board determines that the requested change is minor (*a de minimus* action), the Board may approve the amendment administratively, without a public hearing or referral to the Cattaraugus County Planning Board. If the Planning Board determines that the requested change is major, the Board shall follow the review and approval process contained in this Article, as if it were a new application.

Section 9.10 Revocation of Site Plan Approval

The Planning Board shall have the authority to revoke the site plan approval, after a public hearing, if the current owner or operator fails to comply with any condition(s) of approval of the application or conducts the land use in a manner contrary to the description in the application, and/or conducts the land use in a manner contrary to the regulations of this Zoning Ordinance. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the violation in accordance with Article X of this Zoning Ordinance.

ARTICLE X

ENFORCEMENT, PENALTIES AND OTHER REMEDIES

Section 10.01 Violations

The Code Enforcement Officer shall have the authority to investigate and enforce alleged or suspected violations of this Zoning Ordinance. In this regard he/she shall have the authority to enter onto all premises, public or private, at any reasonable time, consistent with constitutional safeguards and any required warrant.

Section 10.02 Procedure for Abatement of Violations

- (A) Any person may file a complaint in regard to an alleged or suspected violation of this Ordinance. All such complaints must be in writing and shall be filed with the Code Enforcement Officer, who shall properly record and timely investigate the complaint. The CEO may also investigate any alleged violation that he/she has reason to believe has occurred or is occurring.
- (B) Whenever a complaint has been filed, or whenever it shall appear that the provisions of this Ordinance are being violated, the CEO shall investigate the complaint. Except in cases where the alleged violation is in plain view and/or where no entry is necessary, or except in cases where an imminent peril exists, the Code Enforcement Officer shall obtain approval from an owner, lessee, agent, tenant, or other person with authority, to make an inspection of the property.
- (C) Following the inspection of the property, the Code Enforcement Officer shall file a written report, which details the findings of his/her inspection, in his/her office.
- (D) **Letter of Violation**
 - (1) If the Code Enforcement Officer finds that a violation of this Ordinance exists on the property, he/she shall prepare and mail a written Letter of Violation which shall contain the following information:
 - (a) The name of the owner or occupant to whom the Letter is addressed.
 - (b) The location of the premises involved in the violation.
 - (c) A statement describing the condition of the premises at the time of the inspection and showing in which way the premises is in violation of this Ordinance.
 - (d) A demand that the violation be remedied to comply with this Ordinance. The Letter shall set a reasonable time for compliance. (For example, within 15 days of the date of the Letter of Violation.)
 - (e) A statement that a failure to comply with the demand may result in prosecution.
 - (2) **Extension.** Upon application of the owner or occupant showing reasonable cause, the Code Enforcement Officer may grant an extension of up to thirty (30) days for the owner or occupant to comply with the Letter of Violation.

(E) Appearance Ticket

If, after the expiration of the time specified in the Letter of Violation, or after the completion of any extension period, the owner or occupant has failed to comply with the requirements of this Ordinance, the Code Enforcement Officer may institute enforcement procedures as follows:

- (1) The Code Enforcement Officer is hereby authorized, pursuant to Criminal Procedure Law Section 150.20 (3), to issue an appearance ticket to any person whom the CEO has reason to believe has violated this Ordinance, and shall cause such person to appear before the local court.
- (2) After the appearance ticket has been issued, the Code Enforcement Officer shall file an Information and Supporting Deposition with the local justice.

(F) Other Remedies

- (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used, or any land is divided into lots, blocks or sites in violation of this Ordinance, the Town Board, in addition to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to prevent the occupancy of said building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises.
- (2) If at any time any building or structure is erected, constructed, altered, repaired, converted or maintained in conformity with this Ordinance but without a duly issued Building and Zoning Permit and notification is issued by the Code Enforcement Officer to obtain such permit, an application for the permit, along with the required fee, must be filed within five (5) business days from the date of the Code Enforcement Officer's notification.
- (3) The Town Board reserves the right to seek a court order to have a violation corrected by the Town. The expense thereof shall be charged to the property so affected.
 - (a) The owner of the premises shall be held responsible and liable for all charges for such services. The Town shall send a bill for the cost of the correction of the violation to the property owner. Payment shall be due thirty (30) days from the date of such bills, or such other time as the Town may establish. Failure to pay within the designated time shall be deemed a violation of this statute and punishable therefore.
 - (b) If the bill is not paid, the cost shall be charged to the property so affected by including such expense in the next annual tax levy against the property.

- (4) The provisions of this Article shall not limit the available procedures for enforcement and remedies provided for under the Town Law of the State of New York or any other applicable law.

Section 10.03 Penalties

A violation of this Ordinance is hereby declared to be an offense, punishable by a fine not exceeding three hundred fifty dollars (\$350.00) or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars (\$350.00) nor more than seven hundred dollars (\$700.00) or imprisonment for a period not to exceed six (6) months, or both; and, upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars (\$700.00) nor more than one thousand dollars (\$1,000.00) or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers generally, violations of this Ordinance shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

ARTICLE XI AMENDMENTS

Section 11.01 Town Board May Amend

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

Section 11.02 Review by Planning Board

Every proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the Planning Board for its report thereon, prior to Town Board action on the proposal. If the Planning Board does not submit its report within (30) days of the date of the Town Board's referral, or within such longer time period as may be established by the Town Board, it shall be deemed that the Planning Board has approved the proposed amendment or change.

Section 11.03 Amendments by Petition

- (A) A petition to change the Zoning Ordinance, whether to the zoning map or text, shall be filed with the Code Enforcement Officer, who shall refer it to the Town Board.
- (1) If the proposed change is a map amendment, the petition shall identify the land that is the subject of the application by tax map number and by street address. The petition shall state the current zoning designation of the property, the proposed zoning district and the proposed future use of the property. The petitioner shall state if he/she is the owner of record of the property for which the change is requested.
 - (2) If the proposed change is an amendment to the Zoning Ordinance text, the petition shall identify the current provision, the proposed change, and the reason that the change is being requested.
- (B) In the event the Town Board elects to hear the petition from an applicant or a recommendation from the Planning Board, the Town Board shall comply with the referral provisions of this Code and set a public hearing at its convenience.

Section 11.04 County Referral

The proposed amendment(s) shall be referred to the Cattaraugus County Planning Board in accordance with Section 239-m of General Municipal Law and Section 7.07 of this Ordinance.

Section 11.05 Public Notice and Hearing

- (A) Public Notice.** The Town Board by resolution adopted at a stated meeting shall fix the time and place of a public hearing on the proposed amendments, and shall cause notice to be given as follows:
- (1) Notice of the public hearing shall be published at least ten (10) days in advance of such hearing in a newspaper in general circulation in the Town. The notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.
 - (2) In addition, the following notices shall be given, if applicable:
 - (a) A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any State Park shall be mailed to the Regional State Park Commission having jurisdiction over such State facility at least ten (10) days prior to the date of such public hearing.
 - (b) A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any city, village, town, or county, shall be mailed to the clerk of such municipality at least ten (10) days prior to the date of such hearing.
 - (c) A written notice of any proposed change or amendment affecting property within 500 feet of the property of any housing authority erecting or owning a housing project authorized under the public housing law shall be mailed to the executive director of such housing authority and to the chief executive officer of the municipality providing financial assistance thereto, at least ten (10) days prior to the date of such hearing.

(B) Public Hearing. The hearing shall be held at the stated time and place by the Town Board and shall include within its proceedings:

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

Section 11.06 Town Board Action

- (A)** The Town Board may act upon the proposed amendment(s) after the receipt of the Town Planning Board's and Cattaraugus County Planning Board's comments and after the public hearing has been held.

- (B) Prior to final action by the Town Board on the proposed amendment, the Town Board shall complete SEQRA review pursuant to the provision of the state environmental quality review act.
- (C) Any such amendments may be approved by a simple majority vote of the Town Board, except that any such amendment shall require the approval of at least three-fourths of the members of the Town Board in the event such amendment is the subject of a written protest, presented to the Town Board and signed by:
 - (1) The owners of twenty (20) percent or more of the area of land included in such proposed change; or
 - (2) The owners of twenty (20) percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred (100) feet therefrom; or
 - (3) The owners of twenty (20) percent or more of the area of land directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land.

Section 11.07 Filing Requirements

- (A) Amendments made to this Ordinance, excluding any map incorporated therein, shall be entered in the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with the amendment.
- (B) A copy or a summary of the amendment, excluding any map incorporated therein, shall be published once in a newspaper published in the Town, if any, or in a newspaper having circulation in the Town and published in Cattaraugus County, as the Town Board may designate.
- (C) Affidavits of the publication of the summary or copy of the amendment shall be filed with the Town Clerk.
- (D) The Town Clerk shall maintain every map adopted in connection with this Ordinance and every amendment thereto. Said documents shall be made available during regular business hours for public inspection.