

A watercolor illustration of a vibrant city street scene. In the foreground, a wide sidewalk is populated with people: two men walking towards the viewer, and a group of people sitting at outdoor cafe tables. A large tree stands on the left, casting a shadow. In the background, there are multi-story buildings with large windows and a white car parked on the street. The overall style is artistic and colorful.

Chapter 203. Zoning

DISCUSSION DRAFT

March 21, 2019



NYSERDA provided \$161,250 towards this project through Governor Cuomo's Cleaner, Greener Communities program.

KEY:

- | | |
|--------------------|--|
| <u>new text</u> | New text added to existing material |
| deleted | Text proposed for deletion from existing material |
| Sec. 9.1.3 | Highlighted cross-section, to be revised as needed |
| 18 | Note for Town/consultant discussion |
| Check | Note for consultant |

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PART 1.

GENERAL PROVISIONS

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DIV. 1.1. GENERAL

Sec. 1.1.1. Title

This Local Law shall be known as the Zoning Ordinance of the Town of Amherst, County of Erie, State of New York.

Sec. 1.1.2. Purpose

- A. The purpose of this Zoning Ordinance and the intent of the legislative authority in its adoption is to promote the environment of the Town and its public health, safety, convenience, comfort, prosperity and the general welfare by regulating the use of buildings, other structures and land for residences, open space, public facilities, business, services, industry or other purposes; by regulating and restricting the bulk, height, design, building coverage and location of structures; by regulating and limiting population density; and, for the **aforesaid purposes**, to divide the land within the limits of the Town into districts of such number and dimensions generally consistent with the policies of the Comprehensive Plan and to provide procedures for the administration and amendment of said Zoning Ordinance.
- B. The **Zoning** Ordinance is intended to achieve, among others, the following objectives:
1. To protect the character and values of residential, institutional and public uses, business, commercial and manufacturing uses and to insure their orderly and beneficial development;
 2. To provide adequate open spaces for light, air and outdoor uses to include public, common and private open space areas;
 3. To prevent overcrowding of the land;
 4. To prevent excessive concentration of population and to prevent sparse and uncoordinated development;
 5. To regulate and control the location and spacing of buildings on the lot and in relation to the surrounding property generally consistent with the policies of the Comprehensive Plan;
 6. To protect persons and property from damage and injury due to fire or flood;
 7. To preserve and protect significant natural features and vegetation, thereby preventing ecological damage and visual blight which occur when those features or vegetation are eliminated or substantially altered to serve development purposes only;
 8. To assure that structure and land use arrangements are aesthetically harmonious with nearby areas and structures;
 9. To regulate the location of buildings and intensity of uses in relation to streets according to plans so as to cause the least interference with and be damaged least by traffic movements and hence result in lessened street congestion and improved public safety;
 10. To establish zoning patterns that insure economical extensions for sewers, water supply, waste disposal and other public utilities, as well as development of recreation, schools and other public facilities;

11. To guide the future development of the town so as to bring about the gradual conformity of land, structures and uses generally consistent with the policies of the Comprehensive Plan;
 12. To accomplish the specific intents and goals set forth in the introduction to the respective sections; and
 13. To protect the community from visual pollution resulting from the unregulated use of signs and other advertising devices.
- C. Based upon evaluation by the State of New York, the Town Board declares that the use of land for hydrofracking would endanger the health, safety and general welfare of the community.

Sec. 1.1.3. Interpretation

- A. The provisions of this Ordinance ~~do shall~~ not annul or in any way interfere with existing deed or plat restrictions, easements or other agreements between persons, codes, laws, rules, regulations or permits previously adopted or issued, except those which are contrary to and in conflict with this Ordinance. The Town ~~does shall~~ not enforce private deed or plat restrictions.
- B. Wherever this Ordinance imposes greater restrictions upon the use of structures or land, the dimensions of buildings or requires larger land or building areas, yards or other open spaces than are otherwise required or imposed by deed or plat restrictions or laws, this Ordinance ~~shall controls~~; and conversely, other regulations ~~shall control~~ where they impose greater restrictions than this Ordinance, and for that purpose it ~~does shall~~ not annul, modify or impair the provisions of any existing deed or plat restrictions, easements or other agreements.
- C. In interpreting and applying the provisions of this Ordinance, its provisions ~~must shall~~ be held to be the minimum requirements for the promotion of public health, safety, convenience, comfort, prosperity and general welfare and to accomplish the intent of this Ordinance.
- D. Except as specifically provided in this Ordinance, it is not intended by the adoption of this Ordinance to repeal, abrogate or annul any existing provision of any law previously adopted relating to the use of structures and land and the design, erection, alteration or maintenance of structures ~~on such land thereon~~.
- E. Titles and headings have been inserted for convenience of reference and are not intended to define or limit the scope of or otherwise affect any provision in this Ordinance.

Sec. 1.1.4. Authority

This Ordinance is adopted under the grant of power as set forth in §261 of NYS Town Law.

Sec. 1.1.5. Conflict with Other Laws

- A. Where this Ordinance differs or conflicts with other laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, state or federal government, this Ordinance ~~shall applies~~.
- B. The Town of Amherst ~~is shall~~ not ~~be~~ responsible for the enforcement authority of any federal or state law, rule, or regulation cited in this Ordinance.

DRAFT FOR DISCUSSION

Sec. 1.1.6. Jurisdiction

The provisions of this Ordinance ~~shall~~ apply to all land within the Town of Amherst outside of the Village of Williamsville. No structure ~~may shall~~ be erected or structurally altered nor ~~may shall~~ any land development activity take place, unless it conforms to the provisions of this Ordinance. Uses of properties ~~are shall be~~ limited by the provisions of this Ordinance.

Sec. 1.1.7. Subsurface Rights

- A. This Ordinance ~~does shall~~ not abrogate or restrict any subsurface rights acquired by deed or lease, but all surface or above-surface structures in conjunction ~~therewith shall be~~ with such structures are subject to the regulations established in this Ordinance.
- B. Prohibition against the use of high volume hydro fracking (HVHF) and prohibition against the disposition of hydrofracking byproducts.
1. No land in the Town ~~of Amherst may shall~~ be used for high volume hydro fracking (HVHF).
 2. To the extent not pre-empted by Federal, State or County rules, regulations or statutes, no byproducts of hydrofracking are permitted to enter or be disposed of in the Town ~~of Amherst~~.

Sec. 1.1.8. Effective Date

This Ordinance ~~shall become~~ became effective on the 23rd day of May, 2006.

Sec. 1.1.9. Severability

The invalidity of any section or provision of this Ordinance ~~does shall~~ not invalidate any other section or provision of this Ordinance.

Sec. 1.1.10. Transitional Provisions**A. Projects Under Construction Prior to Effective Date**

1. Site plans approved within one year prior to the adoption of this Ordinance or the PUD provisions ~~are shall be~~ allowed to proceed under the regulations of the prior Zoning Ordinance without additional approvals.
2. Any buildings or development for which a permit was issued before May 23, 2006 or before [effective date of PUD], if the PUD provisions apply, may be completed in conformance with the issued permit and other applicable permits and conditions, even if such building or development does not fully comply with provisions of this Ordinance.
3. Nothing in this Ordinance ~~shall requires~~ a change to a phasing plan approved prior to the adoption of this Ordinance or the adoption of the PUD provisions, provided construction is consistent with the terms and conditions of the phasing plan and proceeds to completion within 5 years of the original approval date, unless extended by the Planning Board.
4. If construction is not completed according to the applicable permit terms, the entity that approved the application may, for good cause shown, grant an extension of up to 1 year for such construction. If the building is not completed within the time allowed under the original permit or

any extension granted, then the building ~~must shall~~ be constructed, completed or occupied only in compliance with this Ordinance.

B. Applications Submitted Prior to Effective Date

1. Any complete application submitted before May 23, 2006 may be completed in conformance with applicable permits and conditions of the regulations in effect at the time of submission of the application, even if such application does not fully comply with provisions of this Ordinance.
2. An application submitted before May 23, 2006 not considered complete within 6 months after completion of SEQR review ~~is shall be~~ considered null and void.
3. If construction is not commenced or completed according to the applicable terms of the application, the entity that approved the application may, for good cause shown, grant an extension of up to one year for such construction. If the building is not completed within the time allowed under the original application or any extension granted, then the building ~~must shall~~ be constructed, completed or occupied only in compliance with this Ordinance.

DIV. 1.2. DISTRICTS AND MAP

Sec. 1.2.1. Establishment of Districts

In order to carry out the purpose, intent and objectives of this Ordinance, the Town is hereby divided into the districts established in the table below. ~~Such~~ The districts shall be designated on the Official Zoning Map by symbols and boundaries. When the terms "base district," "residential district," "business district," "industrial district," "special purpose district" or "overlay district" are used in this Ordinance, they shall be construed in accordance with the table below.

RESIDENTIAL		REPLACES:
R-R	Rural Residential District	
S-A	Suburban Agricultural District	
RS-1	Single-Family Detached 1	R-1
RS-2	Single-Family Detached 2	R-2
RS-3	Single-Family Detached 3	R-3
RC-3	Single-Family Cluster 3	CR-3A
R-MH	Manufactured Home	MHR-8
RA-4	Four-Family Attached 4	MFR-4
RA-4A	Four-Family Attached 4A	MFR-4A
RM-12	Multifamily 12	MFR-5
RM-18	Multifamily 18	MFR-6
<u>RM-30</u>	<u>Multifamily 30</u>	NEW
RM-60	Multifamily 60	MFR-7
MIXED USE		
<u>TI-2.5</u>	<u>Traditional Infill 2.5</u>	NEW
<u>TI-4</u>	<u>Traditional Infill 4</u>	NEW
<u>SC-3</u>	<u>Shallow Corridor 3</u>	NEW
<u>DC-5</u>	<u>Deep Corridor 5</u>	NEW
<u>CTR-5</u>	<u>Center 5</u>	NEW
<u>CTR-8</u>	<u>Center 8</u>	NEW
SPECIAL PURPOSE		
AG	Agricultural	
CF	Community Facilities	
OB	Office Building	
RD	Research & Development	
GI	General Industrial	
NCD	New Community District	
<u>-A</u>	<u>Airport Overlay</u>	NEW

Deleted Districts:

TR-3

GB, CS, MS, SC

ST

PRD, PDD

TND, LW-1

(-TNB)

Sec. 1.2.2. Official Zoning Map

- A. The districts listed in **Sec. 1.2.1** are designated by symbols, and the location and boundaries of these districts are shown on the Official Zoning Map which, together with all explanatory matter on the map thereon, is ~~hereby~~ adopted by reference and declared to be part of this Ordinance.
- B. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes ~~must shall~~ be entered on the Official Zoning Map after the amendment has been adopted by the Town Board.
- C. A digital map created through the use of geographic information technology may be used in the administration and enforcement of this Ordinance, but ~~does shall~~ not replace the original of the Official Zoning Map on file in the Town Clerk's office.

Sec. 1.2.3. Relationship to Comprehensive Plan

It is the intention of the Town that this Ordinance, and any subsequent amendments to this Ordinance hereto, implement the planning policies as established by the Town's Comprehensive Plan, as may be amended from time to time. The Town ~~hereby~~ reaffirms its commitment that this Ordinance and any amendment to it be in conformity with such policies.

Sec. 1.2.4. Interpretation of Boundaries

Where uncertainty exists as to boundaries of districts, the following rules ~~shall~~ apply:

- A. Boundaries indicated as approximately following the center lines of streets or highways ~~are shall be~~ construed to follow such center lines.
- B. Boundaries indicated as approximately following existing lot lines ~~are shall be~~ construed as following such lot lines.
- C. Boundaries indicated as approximately following town boundaries ~~are shall be~~ construed as following such boundaries.
- D. Boundaries indicated as following railroad lines ~~are shall be~~ construed to be midway between the main tracks.
- E. Boundaries indicated as approximately following the edge of streams, rivers, canals, lakes or other bodies of water ~~are shall be~~ construed to follow the center lines ~~thereof~~.
- F. Boundaries indicated as parallel to or extensions of features indicated in paragraphs A through E above ~~are shall be~~ construed pursuant to those provisions.
- G. Where physical or cultural features existing on the ground are inconsistent with those shown on the Official Zoning Map, or in other circumstances not covered above, the Zoning Enforcement Officer ~~will shall~~ interpret the district boundaries.
- H. **Where a district boundary line established upon the adoption of this Ordinance divides a lot which was in single ownership at that time, the Town Board may permit the extension of the regulations of either district into the other district in accordance with the Zoning Map amendment procedure in §8-3.**

Sec. 1.2.5. Application of District Regulations

The regulations set by this Ordinance within each district ~~are shall be~~ minimum regulations and ~~shall~~ apply uniformly to all structures and uses, except as otherwise provided in this Ordinance:

- A. No structure or land ~~may shall hereafter~~ be used or occupied, and structure or part ~~of a structure may thereof shall hereafter~~ be erected, constructed, reconstructed, moved or structurally altered, except as permitted in the district and in conformity with all of the regulations specified in this Ordinance.
- B. No structure ~~may shall~~ be erected or altered which exceeds the height or bulk; accommodates or houses a greater number of families; occupies a greater part of the lot area; or has narrower or smaller rear yards, front yards, side yards or other open spaces than permitted or required by this Ordinance.
- C. No part of a yard or other open space or off-street parking, loading or stacking space required about or in connection with any structure for the purpose of complying with this Ordinance ~~must shall~~ be included as part of a yard, open space or off-street parking, loading or stacking space required for any other structure, unless otherwise permitted.
- D. No lot ~~may shall~~ be divided so that the yards or other required open spaces ~~are shall be~~ smaller than required by this Ordinance.
- E. No yard or lot existing at the time of passage of this Ordinance ~~may shall~~ be reduced in dimension or area below the minimum requirements set forth in this Ordinance. Yards or lots created after May 23, 2006 ~~must shall~~ meet the minimum requirements established by this Ordinance.
- F. No required yard ~~may shall~~ be separated in ownership from that portion of the lot on which a structure is located.

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DIV. 2.1. SINGLE-FAMILY DISTRICTS

Sec. 2.1.1. Intent Statements

A. Rural Residential (R-R)

To provide areas for low-density, semi-rural single-family detached residential development that recognizes the need to protect the long-term viability of surrounding agricultural operations. The R-R District also accommodates farms, farm-related activities, and other non-intensive compatible uses.

B. Suburban Agriculture (S-A)

To provide areas for low-density, single-family detached residential development which would also accommodate farms, farm-related activities, and other non-intensive compatible uses.

C. Single-Family Detached (RS-1, RS-2, RS-3)

To provide areas ~~within the Town~~ for low-density single-family detached residential development where each dwelling unit is located on an individual lot ~~of at least 21,780 square feet~~.

D. Single-Family Cluster (RC-3)

To provide areas ~~within the Town~~ for low-density single-family detached residential development on lots which may vary in size but where ~~an overall the~~ minimum lot area ~~is provided. per dwelling unit is 5,000 square feet~~. This district is designed to permit greater flexibility and creativity in the location of structures on the land to encourage conservation and to utilize topography and site features to the best advantage.

E. Manufactured Home (R-MH)

To provide areas planned and developed as manufactured home parks within the Town, as well as areas for manufactured homes on individual lots.

Sec. 2.1.2. **R-R** Rural Residential

A. Building Placement

B. Bulk & Mass

LOT

A Area	3 acres min
B Width	200' min

COVERAGE

C Building Coverage	
Principal	25% max
Principal + Accessory	35% max

SETBACKS

D Front Yard	50' min
E Side or Rear Yard	30' min
Height up to 35' max	30' min
Height over 35'	3' min per foot of building height
F Accessory Structure	5' min

BUILDING HEIGHT

A Building Height	
Residential	2 stories/35' max
Nonresidential	65' max
Accessory	30' max

BUILDING SEPARATION

Accessory	5' min
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DESIGN STANDARDS

Div. 3.3

The maximum permitted height at the side and rear setback lines as measured from the nearest residential district boundary shall be 35 feet or two stories for a structure with a pitched roof of 6:12 or greater, and 30 feet or two stories for a building with a flat roof or pitched roof of less than 6:12. Any structure that faces a public right-of-way shall have its facade set back 20 feet for the first 30 feet of building height and 30 feet for building height above 30 feet. No building shall encroach into the vehicle use setback.

Sec. 2.1.3. **S-A** Suburban Agriculture

A. Building Placement

B. Bulk & Mass

LOT

A Area	1 acre min
B Width	200' min

COVERAGE

C Building Coverage	
Principal	25% max
Principal + Accessory	35% max

SETBACKS

D Front Yard	50' min
E Side or Rear Yard	30' min
Height up to 35' max	30' min
Height over 35'	3' min per foot of building height
F Accessory Structure	5' min

BUILDING HEIGHT

A Building Height	
Residential	2 stories/35' max
Nonresidential	65' max
Accessory	30' max

BUILDING SEPARATION

Accessory	5' min
-----------	--------

DESIGN STANDARDS

Div. 3.3

The maximum permitted height at the side and rear setback lines as measured from the nearest residential district boundary shall be 35 feet or two stories for a structure with a pitched roof of 6:12 or greater, and 30 feet or two stories for a building with a flat roof or pitched roof of less than 6:12. Any structure that faces a public right-of-way shall have its facade set back 20 feet for the first 30 feet of building height and 30 feet for building height above 30 feet. No building shall encroach into the vehicle use setback.

Sec. 2.1.4. **RS-1** Single-Family Detached 1

replaces R-1

A. Building Placement

B. Bulk & Mass

LOT

A Area	21,780 SF min
B Width	100' min

COVERAGE

C Building Coverage	
Principal	35% max
Principal + Accessory	40% max

SETBACKS

D Front Yard	30' min
E Rear Yard	35' min
F Side Yard	
Combined	20' min
Single	8' min
Accessory Structure	3' min

BUILDING HEIGHT

A Building Height	
Principal	2 stories/35' max
Accessory	20' max

BUILDING SEPARATION

Accessory	5' min
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DESIGN STANDARDS

Div. 3.3

~~Min. floor area (dwelling only)~~

~~1 story 1,200-sf~~

~~More than 1 story 1,400-sf~~

Sec. 2.1.5. **RS-2** Single-Family Detached 2

replaces R-2

A. Building Placement

B. Bulk & Mass

LOT

A Area	11,500 SF min
B Width	80' min

COVERAGE

C Building Coverage	
Principal	35% max
Principal + Accessory	40% max

SETBACKS

D Front Yard	30' min
E Rear Yard	35' min
F Side Yard	
Combined	20' min
Single	8' min
Accessory Structure	3' min

BUILDING HEIGHT

A Building Height	
Principal	2 stories/35' max
Accessory	20' max

BUILDING SEPARATION

Accessory	5' min
-----------	--------

DESIGN STANDARDS

Div. 3.3

~~Min. floor area (dwelling only)~~

~~1 story 1,200-sf~~

~~More than 1 story 1,400-sf~~

Sec. 2.1.6. **RS-3** Single-Family Detached 3

replaces R-3

A. Building Placement

B. Bulk & Mass

LOT

A Area	
Interior	8,450 SF min
Corner	9,750 SF min
B Width	
Interior	65' min
Corner	75' min

COVERAGE

C Building Coverage	
Principal	35% max
Principal + Accessory	40% max

SETBACKS

D Front Yard	30' min
E Rear Yard	30' min
F Side Yard	
Combined	10' min
Single	5' min
Accessory Structure	3' min

BUILDING HEIGHT

A Building Height	
Principal	2 stories/35' max
Accessory	20' max

BUILDING SEPARATION

Accessory	3' min
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DESIGN STANDARDS

Div. 3.3

~~Min. floor area (dwelling only)~~

~~Under 2 stories, 1,000-sf~~

~~2-or-more stories, 1,200-sf~~

Sec. 2.1.7. **RC-3** Single-Family Cluster 3

replaces CR-3A

A. Building Placement

B. Bulk & Mass

LOT

A Area, per dwelling	5,000 SF min
B Width	40' min

COVERAGE

C Building Coverage	
Principal	40% max
Principal + Accessory	45% max

SETBACKS

D Front Yard	25' min
E Rear Yard	30' min
F Side Yard	none
Accessory Structure	3' min

BUILDING HEIGHT

A Building Height	
Principal	2 stories/35' max
Accessory	20' max

BUILDING SEPARATION

Principal	10' min
Accessory	3' min

DESIGN STANDARDS

Div. 3.3

Min. floor area (dwelling only)

Under 2 stories, 1,000-sf

2 or more stories, 1,200-sf

Sec. 2.1.8. **R-MH** Manufactured Home

A. **Site + Lot**

B. **Bulk & Mass**

SITE

BUILDING HEIGHT

Area	10 acres min
Number of Lots	50 min
Width	100' min
Recreation Area (% of gross site area)	8% min
Site Boundary Setback	25' min

A Building Height	
Principal	n/a
Accessory	n/a

LOT

BUILDING SEPARATION

Area	4,000 SF min
Width	40' min

Principal	n/a
Accessory	n/a

SETBACKS

DESIGN STANDARDS

Front Yard	30' min
Public Street	30' min
Private Street	25' min
Rear Yard	15' min
Side Yard	15' min
Accessory Structure	n/a

Require PUD over 30 acres?

C. **Screening**

In the **R-MH** District, fences, walls, plantings or other screening materials **must shall** be provided near the boundary of the property.

DIV. 2.2. MULTIFAMILY DISTRICTS

Sec. 2.2.1. Intent Statements

A. **Four-Family Attached 4 (RA-4)**

To provide areas within the Town for the development of attached or detached dwelling units within a single structure.

B. **Four-Family Attached 4A (RA-4A)**

To provide areas within the Town for the development of attached and detached dwelling units.

C. **Multifamily 12 (RM-12)**

To provide areas within the Town for medium-density multifamily development where the relationship among buildings **and between wings of a single building** is regulated in order to assure adequate light and air to residents and protection to and from surrounding development.

D. **Multifamily 18 (RM-18)**

To provide areas within the Town for high-density multifamily development where the relationship among buildings **and between wings of a single building** is regulated in order to assure adequate light and air to residents and protection to and from surrounding development.

E. **Multifamily 30 (RM-30)**

To provide areas within the Town for high-density multifamily development, and single-family detached dwellings not on individual lots.

F. **Multifamily 60 (RM-60)**

To provide areas within the Town for high-density development of adult care facilities, such as senior citizen housing, nursing homes, intermediate care facilities, and single-family detached dwellings not on individual lots.

Sec. 2.2.2. **RA-4** Attached 4

replaces R-4

A. Building Placement

B. Bulk & Mass

LOT

A Area per Dwelling	5,850 SF min
B Width*	
2-Family	90' min
3-Family	105' min
4-Family	120' min

COVERAGE

C Building Coverage	
Principal	35% max
Principal + Accessory	40% max

SETBACKS

D Front Yard	30' min
E Rear Yard	30' min
F Side Yard	
Combined	20' min
Single	8' min
Accessory Structure	5' min

*Detached allowed using standards in Sec. 3.1.6

BUILDING HEIGHT

A Building Height	
Principal	35' max
Accessory	20' max

BUILDING SEPARATION

Accessory	5' min
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DESIGN STANDARDS

Div. 3.3

~~Min. floor area (dwelling only)~~

~~0 bedroom 400-sf~~

~~1 bedroom 640-sf~~

~~2 bedroom 760-sf~~

~~3 bedroom 1,000-sf~~

~~4 bedroom 1,200-sf~~

Sec. 2.2.3. **RA-4A** Attached 4A (Detached)

A. Building Placement

B. Bulk & Mass

LOT

A Area	
Interior	6,000 SF min
Corner	7,200 SF min
B Width	
Interior	50' min
Corner	60' min

COVERAGE

C Building Coverage	
Principal	40% max
Principal + Accessory	45% max

SETBACKS

D Front Yard	25' min
E Rear Yard	20' min
F Side Yard	5' min*
Accessory Structure	5' min

*At the time of final plat approval, site plan approval, or amendment, upon application by one owner of all affected lots, the Planning Board may permit development with side yards of less than five feet, provided that buildings on adjacent lots or the nearest adjacent building, if on the same lot, is separated by at least 10 feet.

BUILDING HEIGHT

A Building Height	
Principal	35' max
Accessory	20' max

BUILDING SEPARATION

Principal	10' min
Accessory	5' min

DESIGN STANDARDS

Div. 3.3

Require PUD over 30 acres?

Min. floor area (dwelling-only)

Under 2-stories, 1,000-sf

2-or-more-stories, 1,200-sf

Sec. 2.2.4. **RA-4A** Attached 4A (Attached)

A. Building Placement

B. Bulk & Mass

LOT

A Area per dwelling	4,300 SF min
B Width	120' min

COVERAGE

C Building Coverage	
Principal	35% max
Principal + Accessory	45% max

SETBACKS

D Front Yard	30' min
E Rear Yard	40' min
F Side Yard	40' min
Accessory Structure	5' min

BUILDING HEIGHT

A Building Height	
Principal	35' max
Accessory	20' max

BUILDING SEPARATION

Principal	10' min
Accessory	5' min

DESIGN STANDARDS

Div. 3.3

Require PUD over 30 acres?

Min. floor area (dwelling-only)

~~0-bedroom-400-sf~~

~~1-bedroom-640-sf~~

~~2-bedroom-760-sf~~

~~3-bedroom-1,000-sf~~

~~4-bedroom-1,200-sf~~

Sec. 2.2.5. **RM-12** Multifamily 12 (Attached*)

replaces MFR-5

A. Building Placement

B. Bulk & Mass

LOT

A Area per dwelling	
0 to 1 bedroom	3,630 SF min
2 bedroom	4,356 SF min
3 bedroom	5,445 SF min
4 bedroom	6,250 SF min
B Width	150' min

COVERAGE

C Building Coverage	
Principal	40% max
Principal + Accessory	45% max

SETBACKS [Sec. 3.3.3](#)

*Detached allowed using standards in [Sec. 3.2.3](#)

BUILDING HEIGHT

A Building Height	
Principal	35' max
Accessory	20' max

BUILDING SEPARATION

Principal	Sec. 3.3.3.A
Accessory	Sec. 3.3.3.C

DESIGN STANDARDS [Div. 3.3](#)

~~Min. floor area (dwelling-only)~~

~~0 bedroom 400-sf~~

~~1 bedroom 640-sf~~

~~2 bedroom 760-sf~~

~~3 bedroom 1,000-sf~~

~~4 bedroom 1,200-sf~~

Sec. 2.2.6. **RM-18** Multifamily 18 (Attached*)

replaces MFR-6

A. Building Placement

B. Bulk & Mass

LOT

A Area per dwelling	
0 to 1 bedroom	2,562 SF min
2 bedroom	2,904 SF min
3 bedroom	3,630 SF min
4 bedroom	4,356 SF min
B Width	200' min

COVERAGE

C Building Coverage	
Principal	40% max
Principal + Accessory	45% max

SETBACKS [Sec. 3.3.3](#)

BUILDING HEIGHT

A Building Height	
Principal	65' max
Accessory	20' max

BUILDING SEPARATION

Principal	Sec. 3.3.3.A
Accessory	Sec. 3.3.3.C

DESIGN STANDARDS [Div. 3.3](#)

*Detached allowed using standards in [Sec. 3.2.3](#)

Sec. 2.2.7. **RM-30 Multifamily 30 (Attached*)**

NEW

A. Building Placement

B. Bulk & Mass

LOT

A <u>Area per dwelling</u>	
<u>0 to 1 bedroom</u>	<u>1,450 SF min</u>
<u>2 or more bedrooms</u>	<u>2,904 SF min</u>
B <u>Width</u>	<u>150' min</u>

COVERAGE

C <u>Building Coverage</u>	
<u>Principal</u>	<u>40% max</u>
<u>Principal + Accessory</u>	<u>45% max</u>

SETBACKS Sec. 3.3.3

BUILDING HEIGHT

A <u>Building Height</u>	
<u>Principal</u>	<u>65' max</u>
<u>Accessory</u>	<u>20' max</u>

BUILDING SEPARATION

Principal	<u>30' min</u>
Accessory	<u>Sec. 3.3.3.C</u>

DESIGN STANDARDS Div. 3.3

*Detached allowed using standards in Sec. 3.2.3

Sec. 2.2.8. **RM-60** Multifamily 60 (Attached*)

replaces MFR-7

A. Building Placement

B. Bulk & Mass

LOT

A Area per dwelling*	
0 to 1 bedroom	725 SF min
2 or more bedrooms	1,000 SF min
B Width	100' min

COVERAGE

C Building Coverage	
Principal	40% max
Principal + Accessory	45% max

SETBACKS [Sec. 3.3.3](#)

BUILDING HEIGHT

A Building Height	
Principal	65' max
Accessory	20' max

BUILDING SEPARATION

Principal	30' min
Accessory	Sec. 3.3.3.C

DESIGN STANDARDS [Div. 3.3](#)

*Detached allowed using standards in [Sec. 3.2.3](#)

DIV. 2.3. SPECIAL DISTRICTS

Sec. 2.3.1. Intent

A. Agricultural (AG)

To provide for continued use of land for agricultural purposes, including farms, floriculture, orchards and nurseries promoting an environment conducive to the long-term stability of agriculture. This district provides for compatible land uses supported by the permitted agricultural uses.

B. Community Facilities District (CF)

To provide a special zoning classification for public and semipublic facilities, including governmental, religious, educational, protective and other civic facilities in order to insure the proper location of such facilities in relation to transportation and other land uses within the town, compatibility of such facilities with adjacent development and proper site design and land development.

C. Recreation/Conservation (RC)

To provide a special zoning classification primarily for public, private and civic uses related to recreation and conservation.

D. Office Building District (OB)

To provide areas within the Town devoted exclusively to offices by regulating the land area, bulk and spacing of uses, particularly at common boundaries and promoting the most desirable land use and traffic patterns in accordance with the objectives of the comprehensive plan.

E. Research and Development District (RD)

To provide areas within the Town for the location of research and development, related production activities, light manufacturing, offices, and related training schools on sufficient land to permit efficient development. Such districts shall be designed and located in such a way that they shall neither encroach upon surrounding uses nor shall surrounding uses interfere with the efficient development of these activities. The RD district is designed to encourage the development of a balanced employment mix within the Town and improve the Town's tax base while providing sufficient educational opportunities to contribute to the training of the workforce and thereby meet the employment needs of businesses locating in the Town.

F. General Industrial District (GI)

To provide areas within the Town for the location of heavier manufacturing and processing facilities, as well as office, research and service establishments, where compatible industries will be located in an organized manner so as to ensure the efficient development of the industrial use and compatibility with adjacent districts. Such district is designed to encourage the development of a balanced employment mix within the Town and to improve the Town's tax base.

Sec. 2.3.2. Agricultural (AG)

A. Building Placement

LOT

A Area	5 acres min
Area per Dwelling	5 acres min
B Width	200' min

COVERAGE

C Building Coverage	
Residential	15% max
Nonresidential	n/a

SETBACKS

D Front Yard	50' min
E Rear Yard	35' min
F Side Yard	
Accessory Structure	5' min

B. Bulk & Mass

BUILDING HEIGHT

A Building Height	
Principal	2 stories/35' max
Nonresidential	65' max

BUILDING SEPARATION

Accessory	5' min
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DESIGN STANDARDS

	None
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Sec. 2.3.3. Community Facilities (CF)

A. Building Placement

B. Bulk & Mass

LOT

Area	None
Width	None

COVERAGE

Building Coverage	None
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SETBACKS

Front Yard	
Building up to 35 feet in height	20' min
Building over 35 feet in height	30' min
Rear Yard	15' min
Side Yard	15' min
Accessory Structure	5' min

VEHICULAR USE AREA

Front Yard landscaped setback	15' min
Side/Rear Yard landscaped setback	
Abutting Residential	10' min
Abutting Nonresidential	5' min

BUILDING HEIGHT

Building Height	65' max
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BUILDING SEPARATION

Accessory	5' min
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DESIGN STANDARDS

None

Sec. 2.3.4. **Recreation/Conservation (RC)**

A. Building Placement

B. Bulk & Mass

LOT

Area	None
Width	None

COVERAGE

Building Coverage	10% max
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SETBACKS

Front Yard	
Building up to 35 feet in height	20' min
Building over 35 feet in height	30' min
Side or Rear Yard, residential	50' min
Side or Rear Yard, nonresidential	15' min
Accessory Structure	5' min

VEHICULAR USE AREA

Front Yard landscaped setback	15' min
Side/Rear Yard landscaped setback	
Abutting Residential	25' min
Abutting Nonresidential	5' min

BUILDING HEIGHT

Building Height	65' max
-----------------	---------

BUILDING SEPARATION

Accessory	5' min
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DESIGN STANDARDS

None

Sec. 2.3.5. Office Building (OB)

A. Building Placement

B. Bulk & Mass

LOT

Area	None
Width	None

COVERAGE

Building Coverage	None
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SETBACKS

Front Yard	
Building up to 35 feet in height	20' min
Building over 35 feet in height	30' min
Side or Rear Yard, up to 35' in height	15' min
Side or Rear Yard, over 35' in height	25' min
Accessory Structure	5' min

VEHICULAR USE AREA

Front Yard landscaped setback	15' min
Side/Rear Yard landscaped setback	
Abutting Residential	25' min
Abutting Nonresidential	10' min

BUILDING HEIGHT

Building Height	65' max
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BUILDING SEPARATION

Internal (On-Site)	30' min
Accessory Structure	5' min

DESIGN STANDARDS

Div. 3.3

Sec. 2.3.6. Research and Development (RD)

A. Building Placement

B. Bulk & Mass

DISTRICT	10 ac. min
LOT	
Area	1 acre min
Width	35' min
COVERAGE	
Building Coverage	None
SETBACKS	
Front Yard	
Building up to 35 feet in height	20' min
Building over 35 feet in height	30' min
Side or Rear Yard, up to 35' in height	15' min
Side or Rear Yard, over 35' in height	25' min
Accessory Structure	5' min
VEHICULAR USE AREA	
Front Yard landscaped setback	25' min
Side/Rear Yard landscaped setback	
Abutting Residential	25' min
Abutting Nonresidential	10' min

BUILDING HEIGHT	
Building Height	65' max
BUILDING SEPARATION	
<u>Internal (On-Site)</u>	30' min
Accessory Structure	5' min
DESIGN STANDARDS	Div. 3.3

Sec. 2.3.7. **General Industrial (GI)**

A. Building Placement

B. Bulk & Mass

LOT

Area	1 acre min
Width	100' min

COVERAGE

Building Coverage	None
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SETBACKS

Front Yard	
Building up to 35 feet in height	20' min
Building over 35 feet in height	30' min
Side or Rear Yard, up to 35' in height	15' min
Side or Rear Yard, over 35' in height	25' min
Accessory Structure	5' min

VEHICULAR USE AREA

Front Yard landscaped setback	25' min
Side/Rear Yard landscaped setback	
Abutting Residential	25' min
Abutting Nonresidential	10' min

BUILDING HEIGHT

Building Height	65' max
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BUILDING SEPARATION

Internal (On-Site)	30' min
Accessory Structure	5' min

DESIGN STANDARDS

Div. 3.3

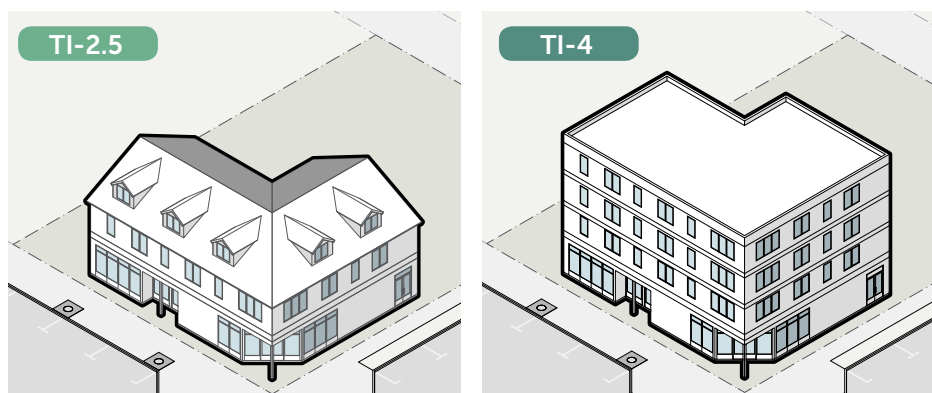
DRAFT FOR DISCUSSION

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DIV. 2.4. INFILL DISTRICTS **NEW**

Sec. 2.4.1. Intent

The Infill Districts are intended to implement the Traditional future center designation of the Town's 2018 Comprehensive Plan. In this form, buildings are typically built next to the sidewalk, with little or no front setback. New buildings are scaled to fit into the setting of the traditional areas. Examples of traditional form include older areas of Town such as Eggerstville, Snyder and Williamsville. These Infill Districts allow for redevelopment and infill in a form that is pedestrian-friendly and supports the surrounding neighborhood.



Sec. 2.4.2. Districts

The following Traditional Infill Districts are established.

A. Traditional Infill 2.5 (TI-2.5)

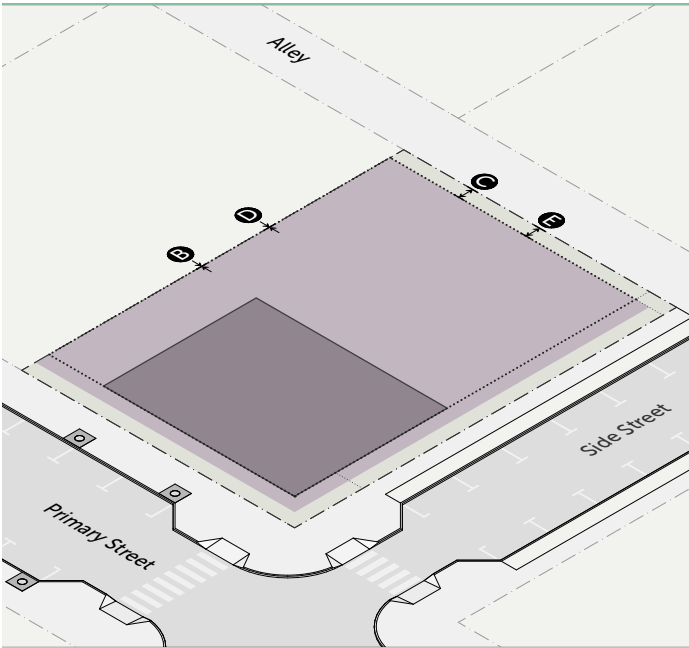
The Traditional Infill 2.5 District is intended for infill and redevelopment sites that immediately abut residential neighborhoods on shallow parcels. The TI 2.5 District allows for a 2-story flat-roofed building as well as a 3 story building where the third story is within the roof form.

B. Traditional Infill 4 (TI-4)

The Traditional Infill 4 District is intended for infill and redevelopment sites that are deeper parcels or adjacent to taller existing development that allow for up to 4 stories in height.

Sec. 2.4.3. **TI-2.5** Traditional Infill 2.5

A. Site



LOT

Area	0 SF min
Width	0' min
Outdoor amenity space	10% min

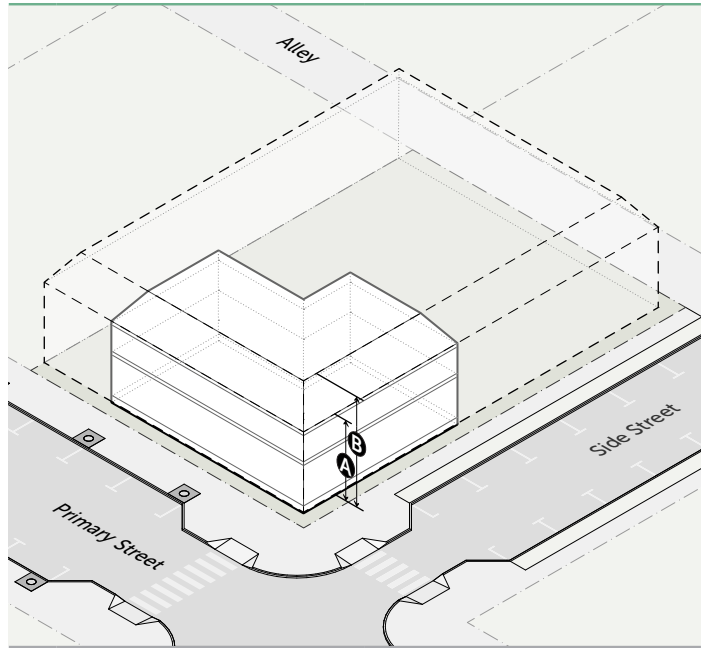
BUILDING SETBACKS

Build-to zone	See Div. 2.5 Infill Frontages
Primary and side street lot frontage	See Div. 2.5 Infill Frontages
B Common lot line	0' min
C Alley	5' min

PARKING SETBACKS

Primary and side street	See Div. 2.5 Infill Frontages
D Common lot line	0' min
E Alley	5' min

B. Building



BUILDING HEIGHT

A Top plate height	2 stories/24' max
B Building height	2.5 stories/35' max

BUILDING LENGTH

See Div. 2.5 Infill Frontages

STORY HEIGHT

See Div. 2.5 Infill Frontages

ACTIVATION

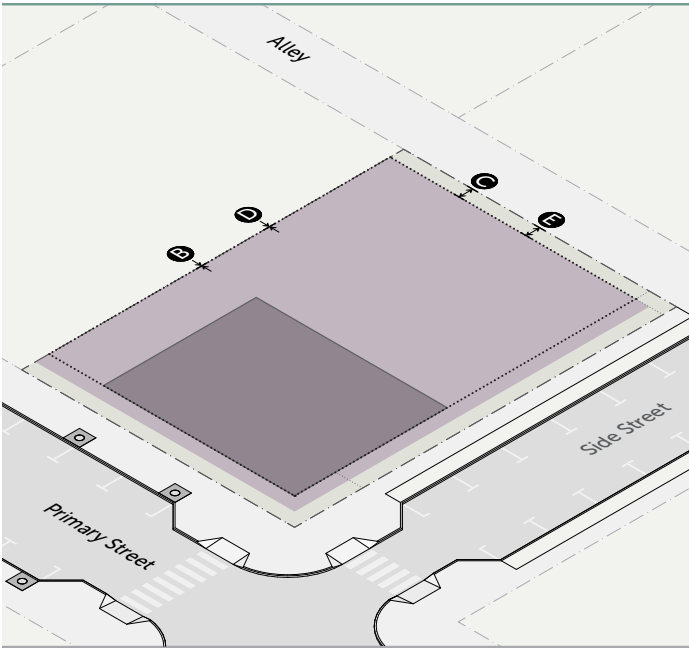
See Div. 2.5 Infill Frontages

USE

See Div. 2.5 Infill Frontages

Sec. 2.4.4. **TI-4** Traditional Infill 4

A. Site



LOT

Area	0 SF min
Width	0' min
Outdoor amenity space	10% min

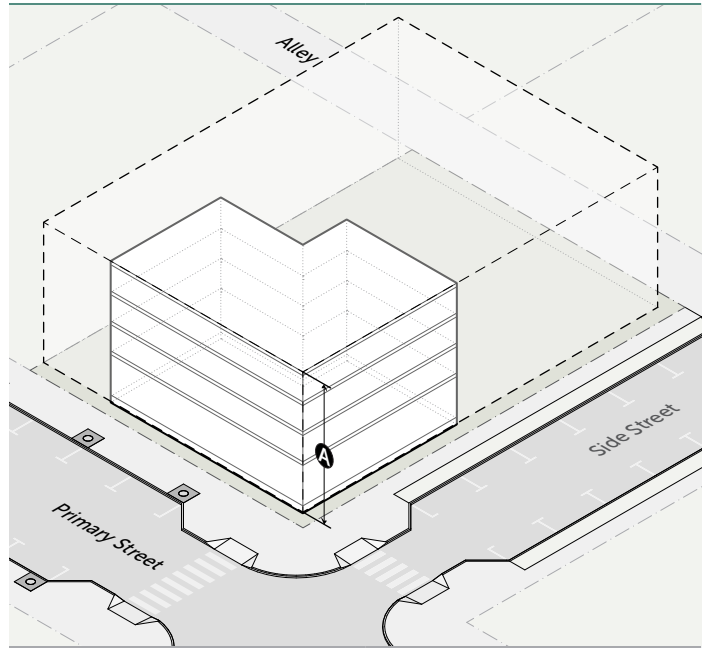
BUILDING SETBACKS

Build-to zone	See Div. 2.5 Infill Frontages
Primary and side street lot frontage	See Div. 2.5 Infill Frontages
B Common lot line	0' min
C Alley	5' min

PARKING SETBACKS

Primary and side street	See Div. 2.5 Infill Frontages
D Common lot line	0' min
E Alley	5' min

B. Building



BUILDING HEIGHT

Top plate height	n/a
A Building height	4 stories/45' max
Roof pitch	n/a

BUILDING LENGTH

See Div. 2.5 Infill Frontages

STORY HEIGHT

See Div. 2.5 Infill Frontages

ACTIVATION

See Div. 2.5 Infill Frontages

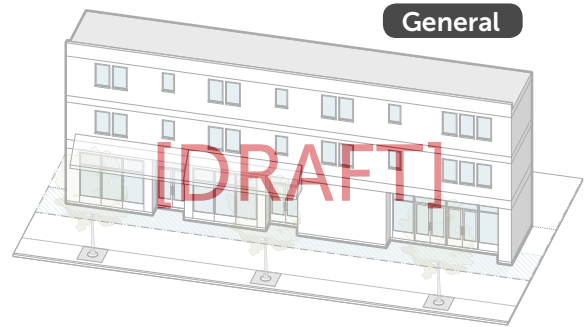
USE

See Div. 2.5 Infill Frontages

DIV. 2.5. INFILL FRONTAGES **NEW**

Sec. 2.5.1. Applicability

The Infill Frontages are established as an overlay mechanism to supplement the standards in the underlying district. These frontages are applied to all street-facing block faces where designated on the Official Zoning Map. Where no frontage is mapped on the Official Zoning Map, the General Frontage applies. The frontage introduces additional dimensional standards to Infill Districts including building setbacks, parking setbacks, story height, transparency, pedestrian access, and streetscape.

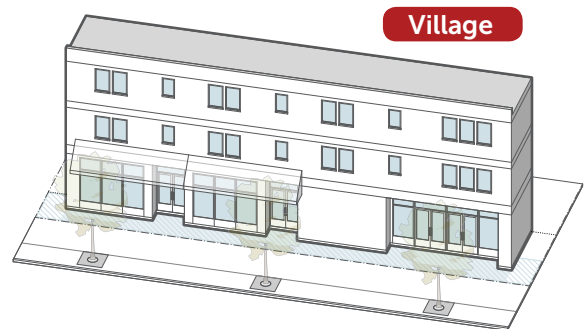


Sec. 2.5.2. Frontages

The following Infill Frontages are established.

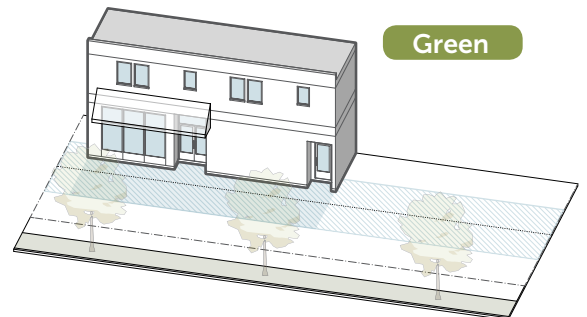
A. General

The General Frontage provides for a walkable mixed-use street, moving the building up near the back of the sidewalk, and providing for a moderate build-to percentage.



B. Village

The Village Frontage provides for a walkable retail street, moving the building up to the back of the sidewalk, and providing for a high build-to percentage, ensuring a "main street" environment.



C. Green

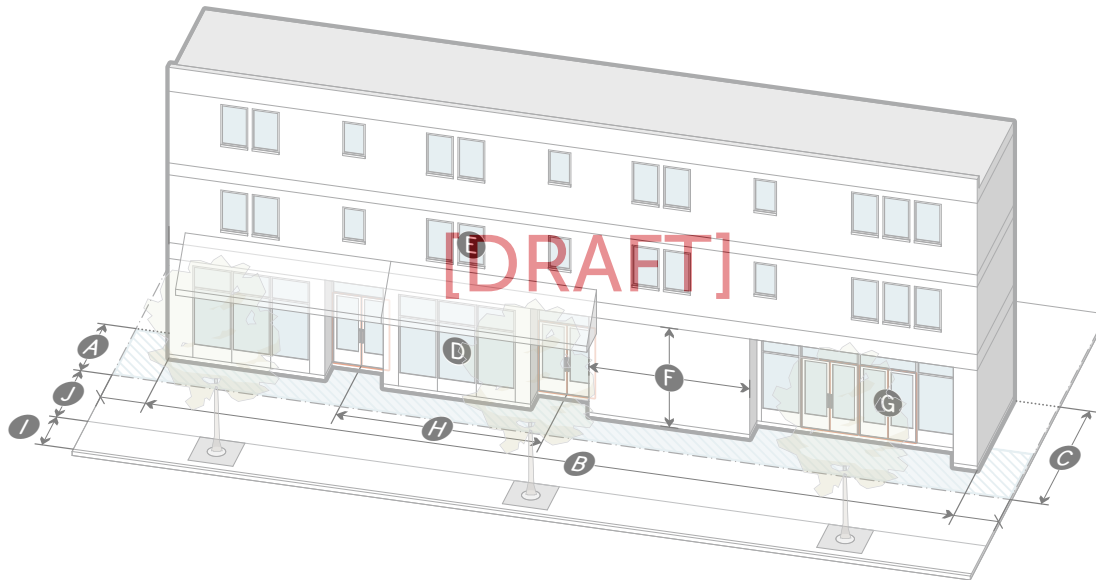
The Green Frontage provides for a deeper setback, moving the building back from the street, but not allowing parking between the building and the street.



D. Residential

The Residential Frontage provide a low build-to percentage and modest transparency requirements, allowing for buildings that are closer in mass and scale to large traditional houses.

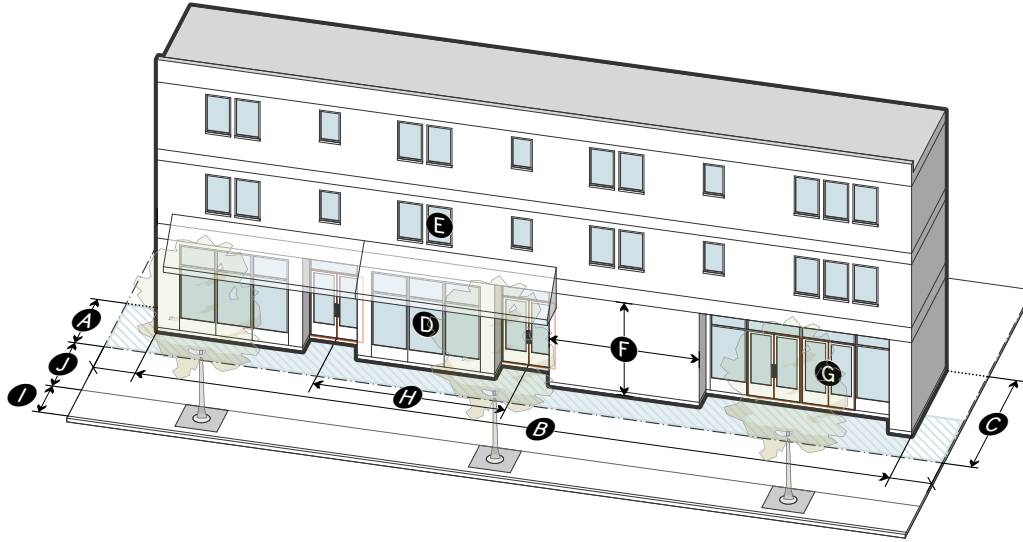
Sec. 2.5.3. General Frontage



BUILDING SETBACKS	Primary Street	Side Street
A Build-to zone	0' min/ 10' max	0' min/ 20' max
B Lot frontage	75% min	40% min
PARKING SETBACKS		
C Street	20' min	10' min
BUILDING LENGTH		
D Street-facing building length	200' max	150' max
STORY HEIGHT		
Ground floor elevation		
Residential	2' min / 5' max	2' min / 5' max
Non-residential	0' min / 2' max	0' min / 2' max
Ground story height	13' min	13' min
Upper story height	9' min	9' min

TRANSPARENCY	Primary Street	Side Street
E Ground story	20% min	20% min
Residential	20% min	20% min
Non-residential	50% min	30% min
F Upper story	20% min	20% min
G Blank wall	20' max	30' max
PEDESTRIAN ACCESS		
H Street-facing entrance	Required	n/a
Entrance spacing	50'	75'
STREETSCAPE		
I Curb zone	6' min	6' min
Tree planting type	Tree lawn	Tree lawn
Tree spacing	35' on-center avg.	35' on-center avg.
J Clear pedestrian zone	6' min	6' min

Sec. 2.5.4. Village Frontage



BUILDING SETBACKS

A Build-to zone	0' min/10' max
B Lot frontage	90% min

PARKING SETBACKS

C Street	20' min
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BUILDING LENGTH

Street-facing building length	200' max
-------------------------------	----------

STORY HEIGHT

Ground floor elevation	0' min / 2' max
Ground story height	13' min
Upper story height	9' min

TRANSPARENCY

D Ground story	70% min
E Upper story	20% min
F Blank wall	15' max

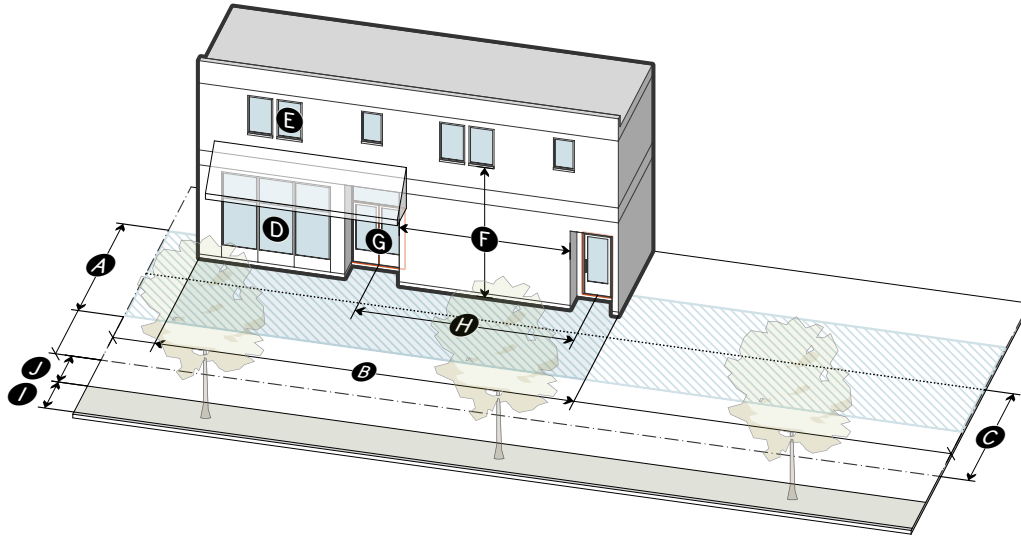
PEDESTRIAN ACCESS

G Street-facing entrance	Required
H Entrance spacing	30' max

STREETScape

I Curb zone	6' min
Tree planting type	Grates
Tree spacing	35' on-center avg.
J Clear pedestrian zone	10' min

Sec. 2.5.5. **Green Frontage**



BUILDING SETBACKS

A	Build-to zone	10' min/30' max
B	Lot frontage	60% min

PARKING SETBACKS

C	Street	20' min
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TRANSPARENCY

D	Ground story	50% min
E	Upper story	20% min
F	Blank wall	20' max

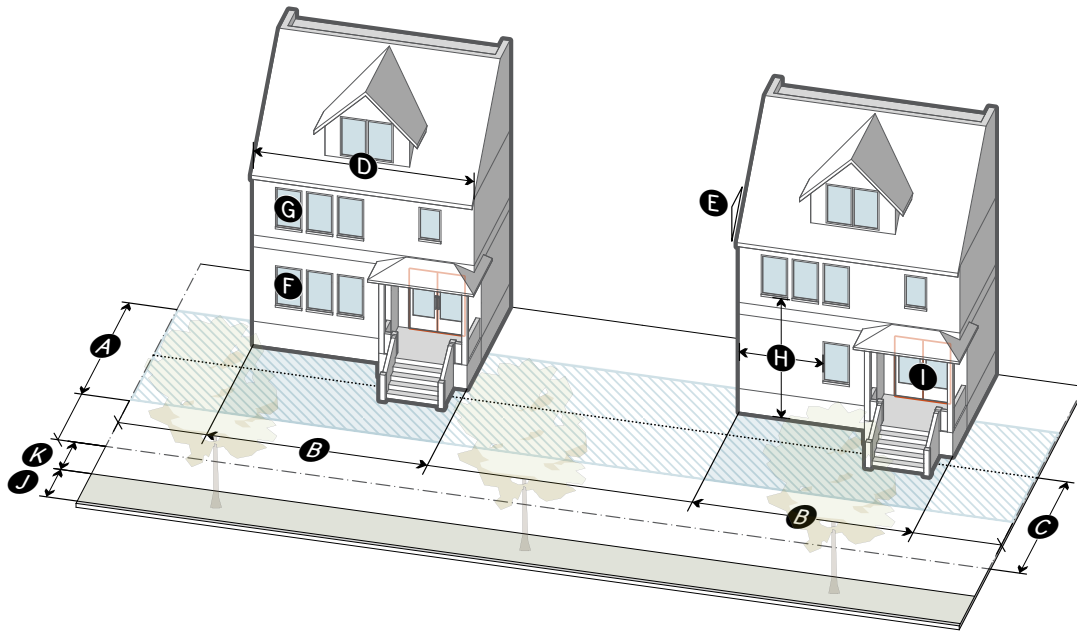
PEDESTRIAN ACCESS

G	Street-facing entrance	Required
H	Entrance spacing	50' max

STREETScape

I	Curb zone	6' min
	Tree planting type	Tree lawn/grates
	Tree spacing	35' on-center avg.
J	Clear pedestrian zone	6' min

Sec. 2.5.6. Residential Frontage



BUILDING SETBACKS

A	Build-to zone	10' min/30' max
B	Lot frontage	30% min

PARKING SETBACKS

C	Street	20' min
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BUILDING MASS

D	Street-facing building length	40' max
E	Roof pitch	4:12 min/ 18:12 max

TRANSPARENCY

F	Ground story	20% min
G	Upper story	20% min
H	Blank wall	30' max

PEDESTRIAN ACCESS

I	Street-facing entrance	Required
	Entrance spacing	n/a

STREETSCAPE

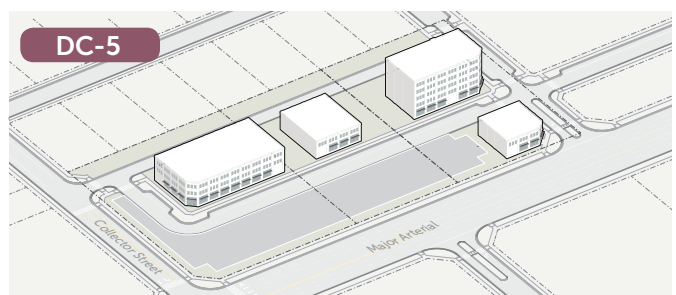
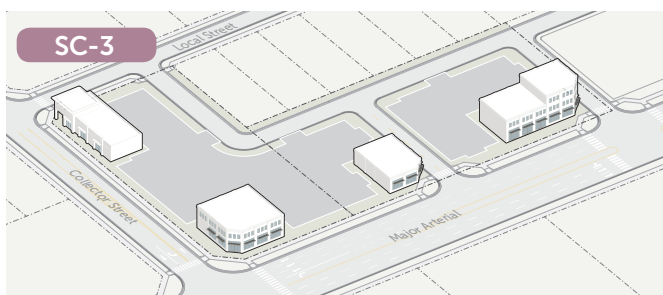
J	Curb zone	6' min
	Tree planting type	Tree lawn
	Tree spacing	35' on-center avg.
K	Clear pedestrian zone	6' min

DIV. 2.6. RETROFIT DISTRICTS

NEW

Sec. 2.6.1. Intent

The Retrofit Districts are intended for parcels of land that are designated commercial and mixed-use activity centers in the Town's 2018 Comprehensive Plan. These larger parcels lie along corridors and in centers at the intersection of major corridors throughout the Town. The intent is to improve safety and the experience for all users along major roadways. The Retrofit Districts also create a network of human-scaled streets that connect the community to "places" within newly-developed or redeveloped sites. This street framework is intended to promote incremental change in the existing patterns of development over time.



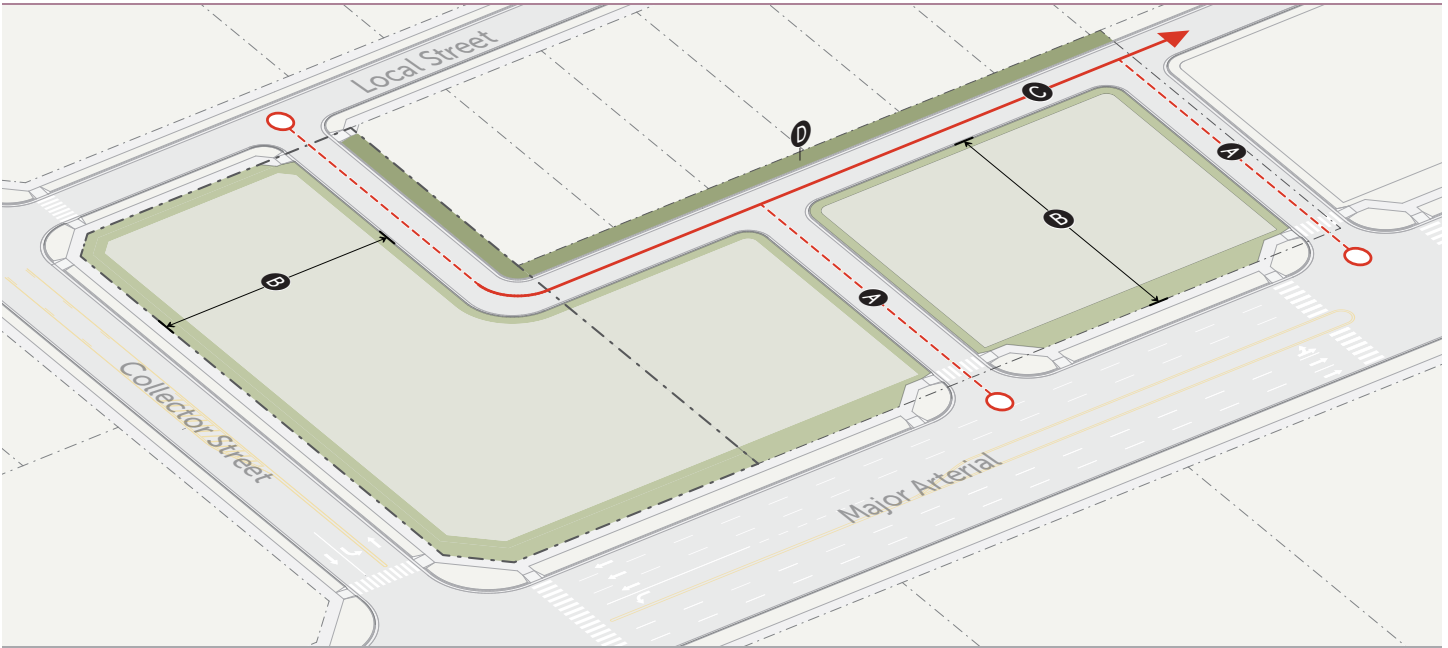
Sec. 2.6.2. Districts

The following Retrofit Districts are established.

- A. Shallow Corridor 3 (SC-3)
- B. Deep Corridor 5 (DC-5)
- C. Center 5 (CTR-5)
- D. Center 8 (CTR-8)

Sec. 2.6.3. **SC-3** Shallow Corridor 3

A. District



INTENT

The Shallow Corridor 3 District is intended for shallow corridor parcels (less than 200' deep). New development will range from 1 to 3 stories in height. Where these districts abut single-family residential areas, a transition is required. The Shallow Corridor 3 District is intended to provide for a variety of retail, service and commercial uses, as well as multi-unit residences or offices.

USE

Allowed uses See Div. 3.1

SHARED ACCESS DRIVE

A Required easement Drive Lane (Sec.4.6.7)

CROSS ACCESS

B Distance from street lot line 80' min / 170' max

C Required easement Alley (Sec.4.6.7)

Required frontage None

BLOCKS

Perimeter None

Length 1200' max

TRANSITION

D Shallow Lot Transition Sec.4.5.3.

B. Site



LOT

Area	0 SF min
Width	0' min
Outdoor amenity space	5% min

BUILDING SETBACKS

A Street lot line	See frontage
B Common lot line	0' min
C Alley	5' min

PARKING SETBACKS

D Street lot line	See frontage
E Common lot line	0' min
F Alley	0' min

C. Building



BUILDING MASS

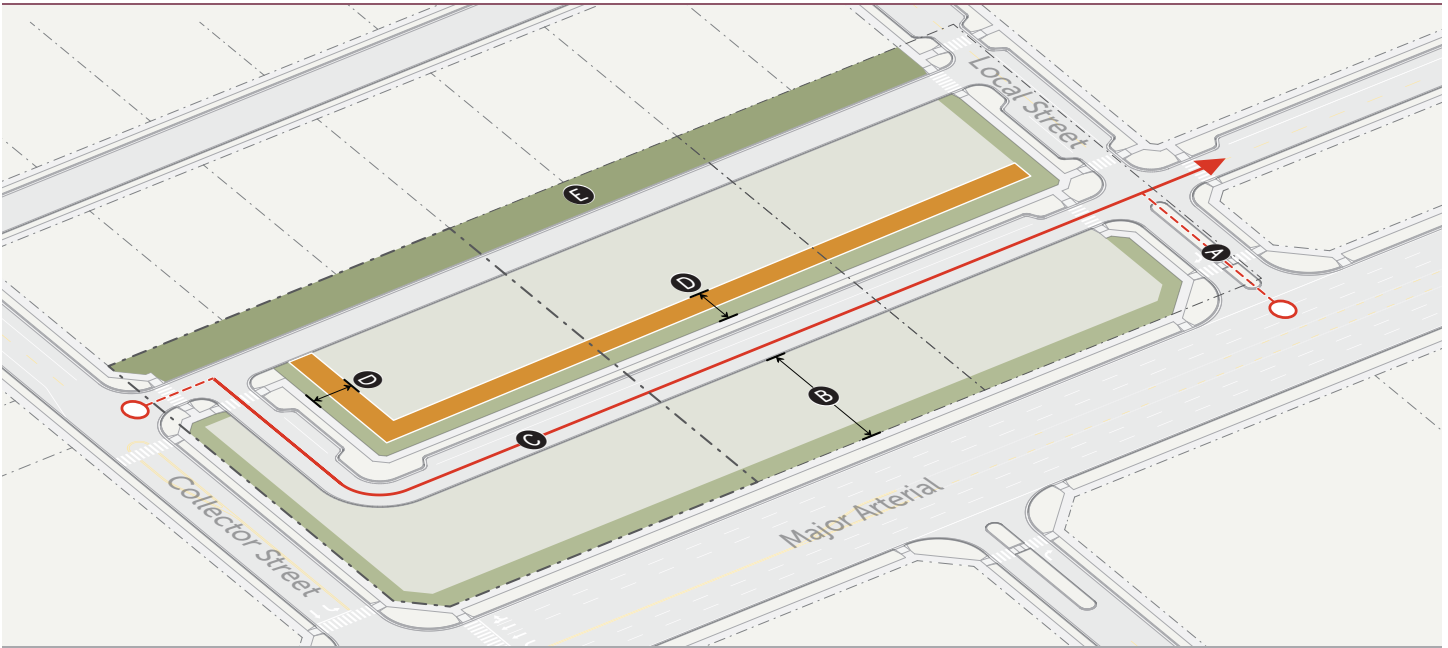
A Building height	3 stories/42' max
Street-facing building length	n/a

ACTIVATION

See frontage

Sec. 2.6.4. **DC-5 Deep Corridor 5**

A. District



INTENT

The Deep Corridor 5 District is intended for deep corridor parcels (over 200' deep). New development will range from 1 to 5 stories in height. Where these districts abut single-family residential areas, a transition is required. The Deep Corridor 5 District is intended to provide for a variety of retail, service and commercial uses, as well as multi-unit residences or offices.

USE

Allowed uses See Div. 3.1

SHARED ACCESS DRIVE

A Required easement Local (Sec. 4.6.4)

CROSS ACCESS

B Distance from street lot line 90' min / 200' max

C Required easement Half Core-Street (Sec. 4.6.6.)

D Required frontage Half Core-Street (Sec. 4.6.6.)

BLOCKS

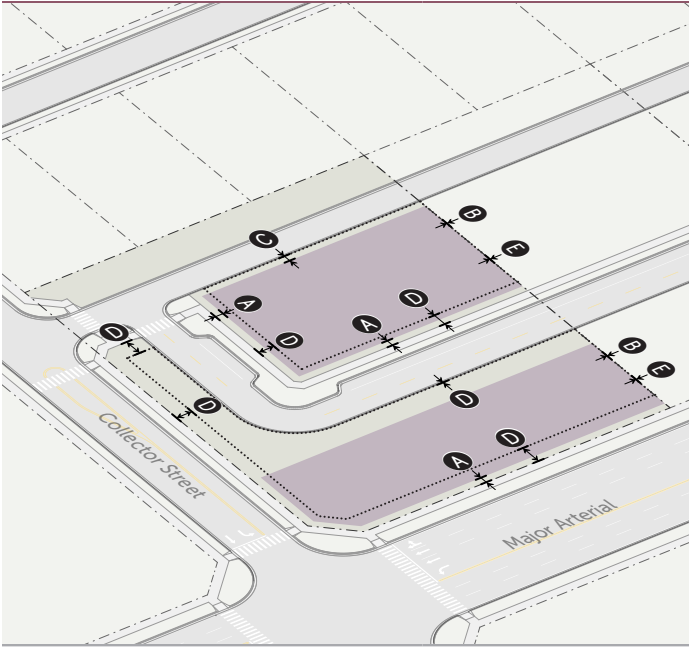
Perimeter None

Length 1200' max

TRANSITION

E Deep Lot Transition See Sec. 4.5.3.

B. Site



LOT

Area	0 SF min
Width	0' min
Outdoor amenity space	5% min

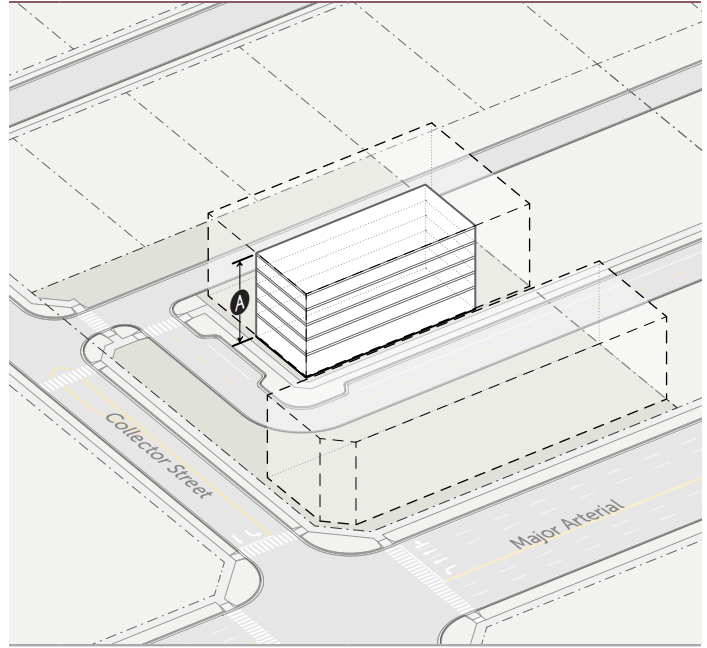
BUILDING SETBACKS

A Street lot line	See frontage
B Common lot line	0' min
C Alley	5' min

PARKING SETBACKS

D Street lot line	See Frontage
E Common lot line	0' min
Alley	5' min

C. Building



BUILDING MASS

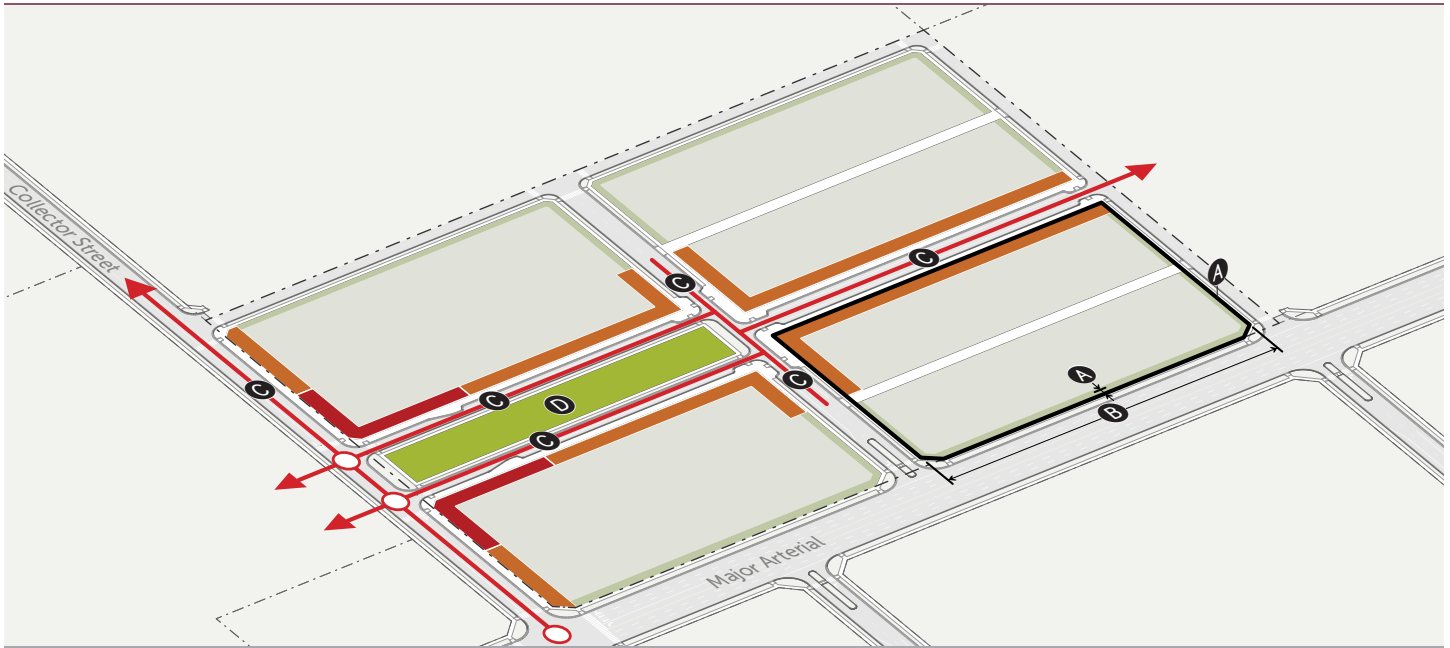
A Building height	5 stories/65' max
Street-facing building length	n/a

ACTIVATION

See Frontage

Sec. 2.6.5. **CTR-5 Center 5**

A. District



INTENT

The Center 5 District is intended to create new walkable mixed-use places with human-scaled internal streets. New development will range from 1 to 5 stories in height. The Center 5 District is intended to provide for a variety of retail, service and commercial uses, as well as multi-unit residences or offices.

USE

Allowed uses See Div. 3.1

BLOCKS

A Perimeter	1600' max
B Length	600' max

STREETS

C Core streets	20% min (Sec.4.6.3.)
Required frontage	Village core street (Sec.4.4.8) Walkable core street (Sec.4.4.9.)

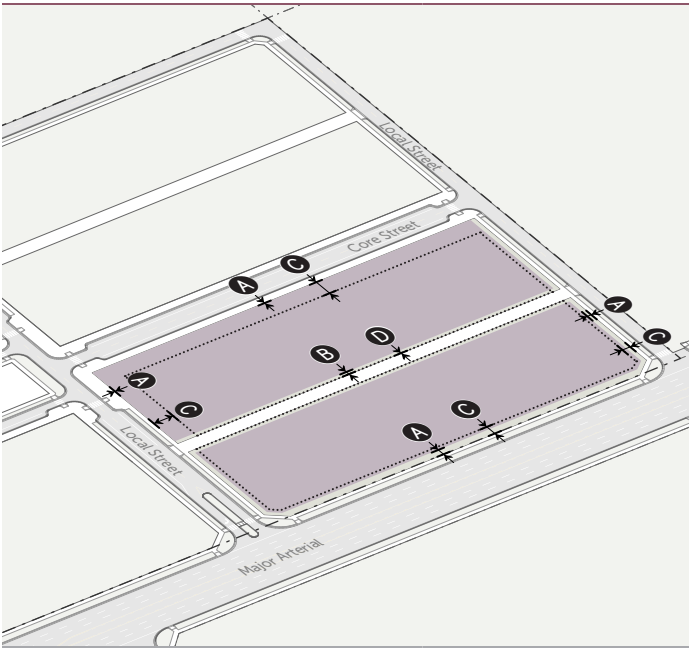
TRANSITION

Deep Lot Transition	(Sec.4.5.3.)
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OPEN SPACE

D Area	5%
---------------	----

B. Site



LOT

Area	0 SF min
Width	0' min

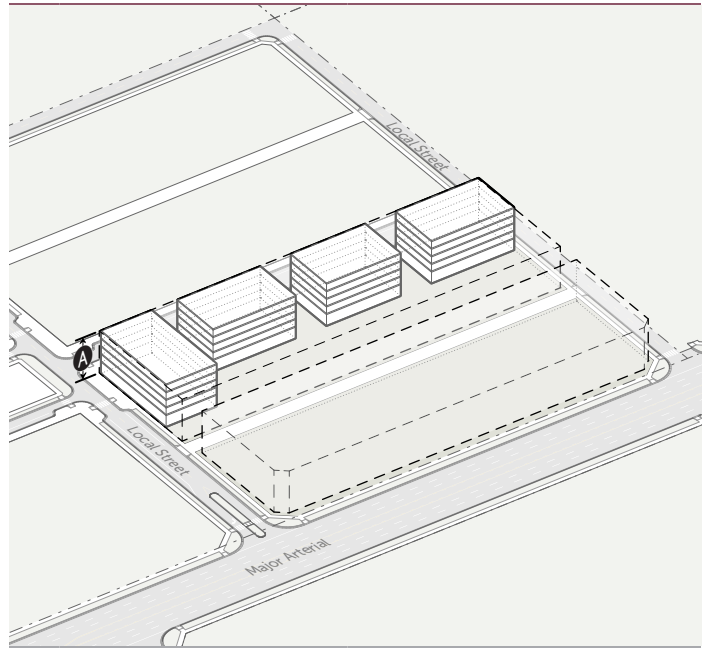
BUILDING SETBACKS

A Street lot line	See frontage
Common lot line	0' min
B Alley	5' min

PARKING SETBACKS

C Street lot line	See frontage
Common lot line	0' min
D Alley	0' min

C. Building



BUILDING MASS

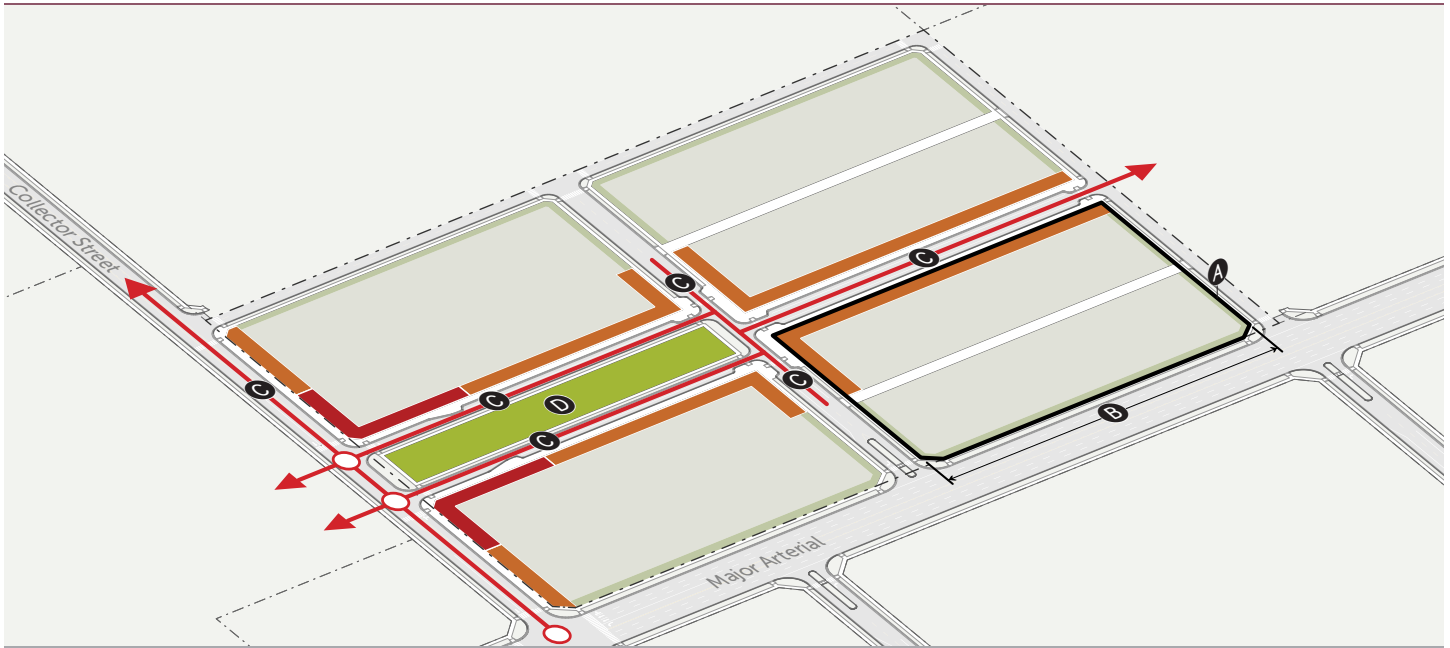
A Building height	5 stories/65' max
Street-facing building length	n/a

ACTIVATION

See frontage

Sec. 2.6.6. **CTR-8 Center 8**

A. District



INTENT

The Center 8 District is intended to create new walkable mixed-use places with human-scaled internal streets. New development will range from 1 to 8 stories in height. The Center 8 District is intended to provide for a variety of retail, service and commercial uses, as well as multi-unit residences or offices.

USE

Allowed uses See Div. 3.1

BLOCKS

A Perimeter	1600' max
B Length	600' max

STREETS

C Core streets	20% min (Sec.4.6.3.)
Required frontage	Village core street (Sec.4.4.8) Walkable core street (Sec.4.4.9.)

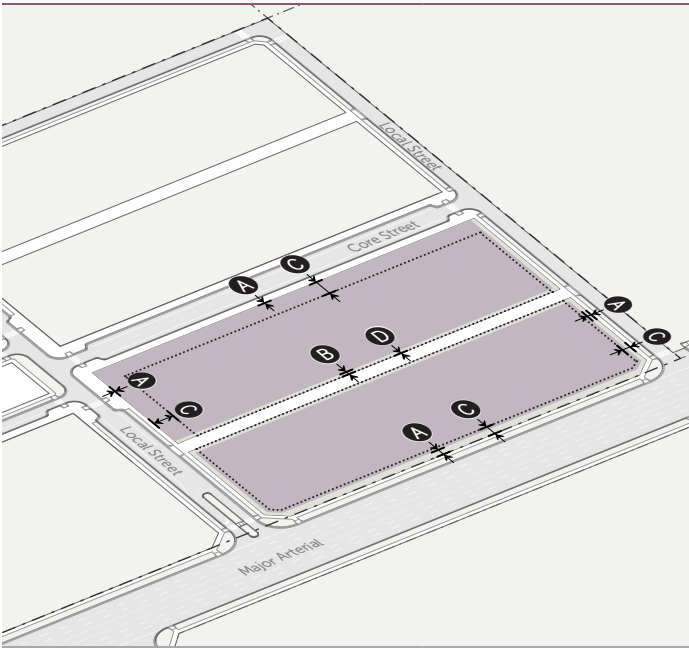
TRANSITION

Deep Lot Transition	(Sec.4.5.3.)
---------------------	--------------

OPEN SPACE

D Area	5%
---------------	----

B. Site



LOT

Area	0 SF min
Width	0' min

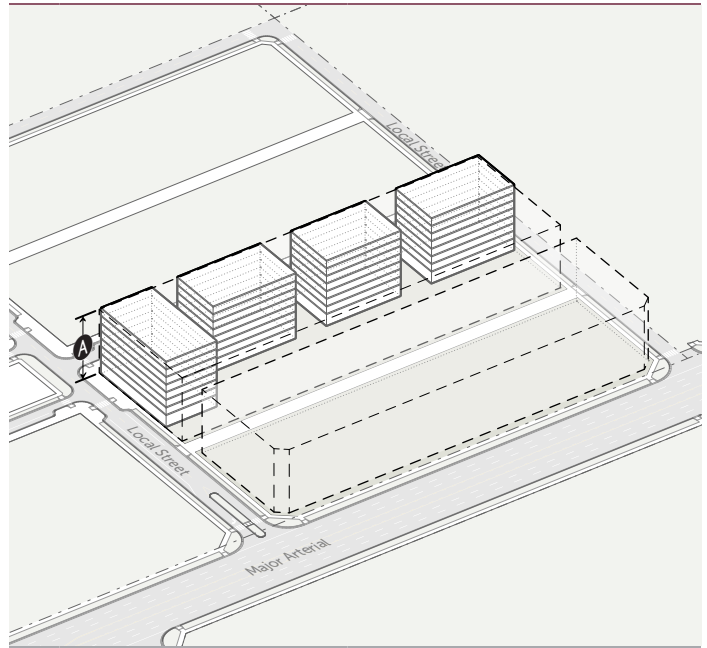
BUILDING SETBACKS

A Street lot line	See frontage
Common lot line	0' min
B Alley	5' min

PARKING SETBACKS

C Street lot line	See frontage
Common lot line	0' min
D Alley	0' min

C. Building



BUILDING MASS

A Building height	8 stories/105' max
Street-facing building length	n/a

ACTIVATION

See frontage

DIV. 2.7. **RETROFIT FRONTAGES**

NEW

Sec. 2.7.1. **Intent**

The Retrofit Frontages are established as an overlay mechanism to supplement standards in the Retrofit Districts. These frontages are applied to all street facing block faces of suburban districts based on street classification as designated in the Town's 2018 Comprehensive Plan Future Thoroughfare System Map. The frontage introduces specific dimensional standards to suburban districts including shared access drive, building setbacks, parking setbacks, streetscape, story height, transparency, and pedestrian access.

Sec. 2.7.2. **Retrofit Frontages**

The following Retrofit Frontages are established.

A. **Local Street**

This frontage provides for a walkable internal street within new retrofit development.

B. **Collector Street**

This frontage provides for the appropriate treatment of Collector Streets that exist or are created in new retrofit development.

C. **Minor Arterial**

This frontage provides for the appropriate treatment of Minor Arterial Streets that exist or are created in new retrofit development.

D. **Major Arterial**

This frontage provides for the appropriate treatment of Major Arterial Streets that exist or are created in new retrofit development.

E. **Half-Street Cross Access**

This frontage provides for a narrow cross-access street along a lot line that will eventually become a full street when the adjacent site is redeveloped.

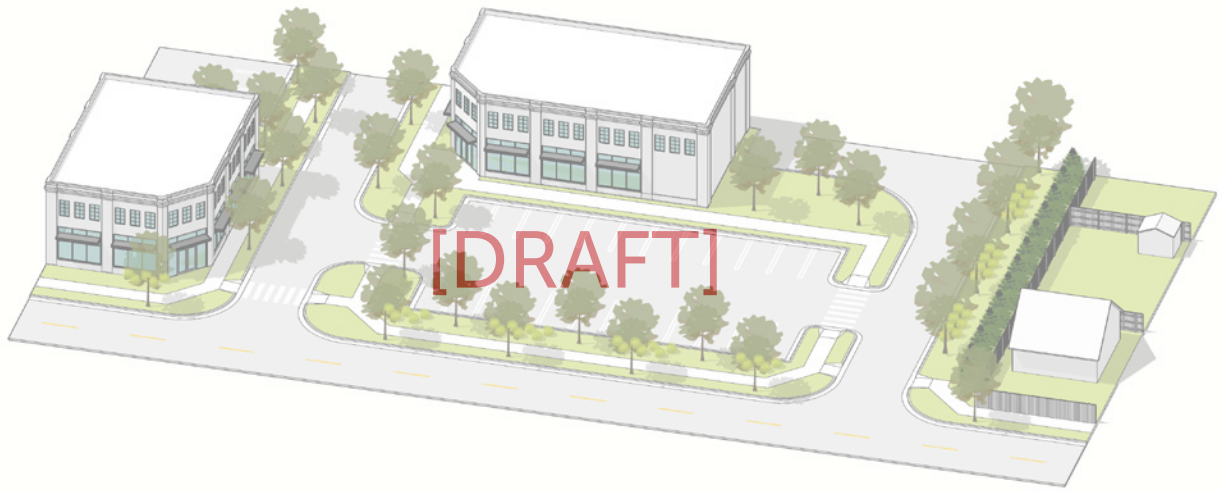
F. **Walkable Core Street**

This frontage provides for a walkable streetscape along core streets within new retrofit development.

G. **Village Core Street**

This frontage provides for an active walkable streetscape along core streets within new retrofit development.

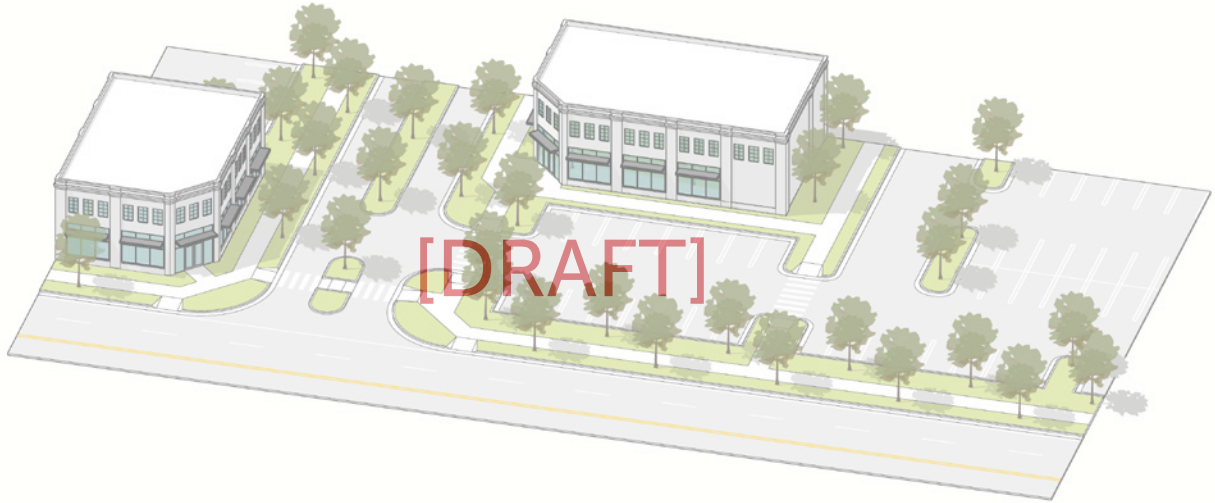
Sec. 2.7.3. Local Street Frontage



SHARED ACCESS DRIVE	
Separation	100' min
Distance after intersection	75' min
Distance before intersection	100' min
Throat depth	35' min
BUILDING SETBACKS	
Street	5' min
PARKING SETBACKS	
Street	10' min
STREETSCAPE	
Curb zone	5' min
Tree planting type	Tree lawn
Tree spacing	35' on-center avg.
Clear pedestrian zone	5' min

	Residential	Non-residential
STORY HEIGHT		
Ground floor elevation	2' min / 4' max	0' min / 2' max
Ground story height	9' min	14' min
TRANSPARENCY		
Ground story	20% min	30% min
Upper story		20% min
Blank wall		30' max
PEDESTRIAN ACCESS		
Street-facing entrance		Not required
Entrance spacing		75' max

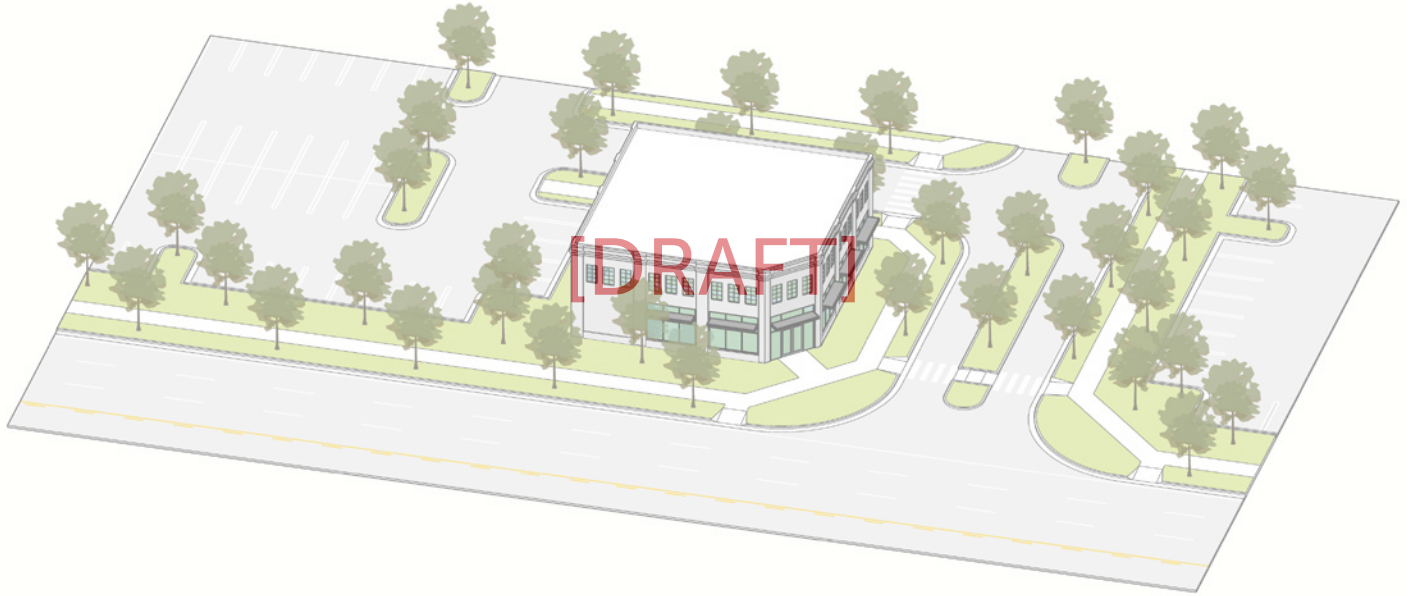
Sec. 2.7.4. Collector Street Frontage



SHARED ACCESS DRIVE	
Separation	200' min
Distance after intersection	100' min
Distance before intersection	200' min
Throat depth	40' min
BUILDING SETBACKS	
Street	5' min
PARKING SETBACKS	
Street	10' min
STREETSCAPE	
Curb zone	6' min
Tree planting type	Tree lawn
Tree spacing	35' on-center avg.
Clear pedestrian zone	6' min

	Residential	Non-residential
STORY HEIGHT		
Ground floor elevation	2' min / 4' max	0' min / 2' max
Ground story height	9' min	14' min
TRANSPARENCY		
Ground story	20% min	50% min
Upper story		20% min
Blank wall		40' max
PEDESTRIAN ACCESS		
Street-facing entrance		Required
Entrance spacing		75' max

Sec. 2.7.5. Minor Arterial Frontage



SHARED ACCESS DRIVE

Separation	300' min
Distance after intersection	200' min
Distance before intersection	350' min
Throat depth	75' min

BUILDING SETBACKS

Street	10' min
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PARKING SETBACKS

Street	15' min
--------	---------

STREETSCAPE

Curb zone	8' min
Tree planting type	Tree lawn
Tree spacing	35' on-center avg.
Clear pedestrian zone	6' min

STORY HEIGHT

	Residential	Non-residential
Ground floor elevation	2' min / 4' max	0' min / 2' max
Ground story height	9' min	14' min

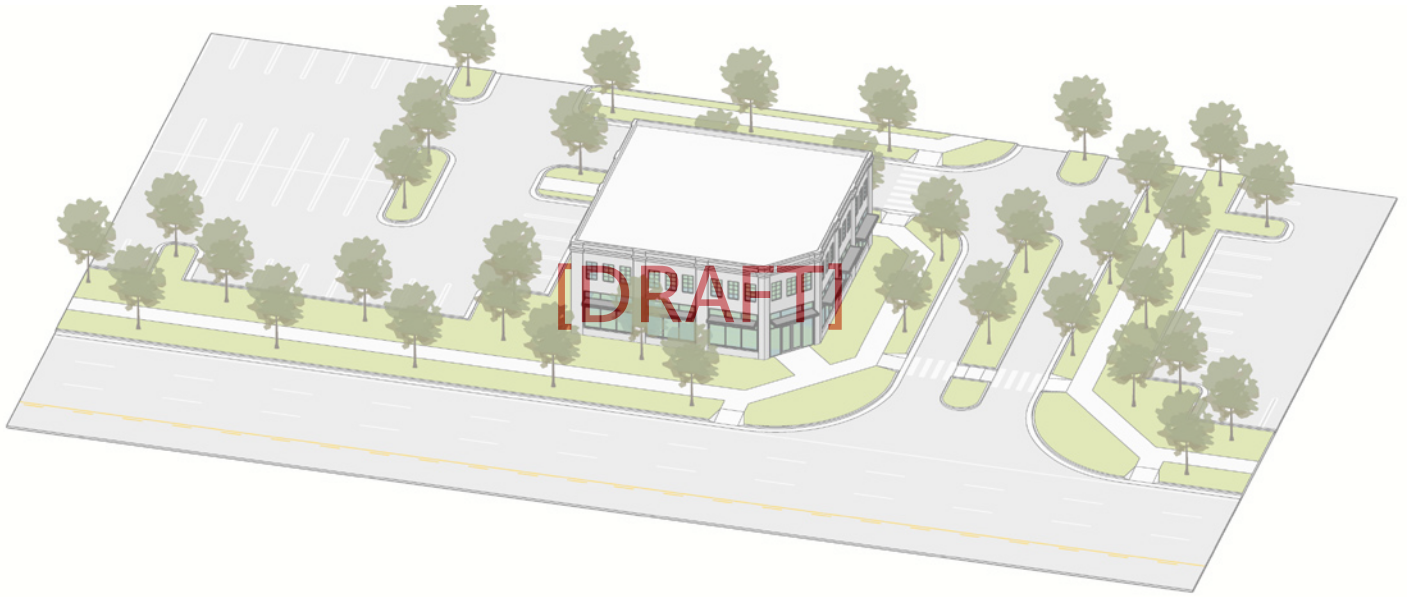
TRANSPARENCY

	Residential	Non-residential
Ground story	20% min	60% min
Upper story		20% min
Blank wall		40' max

PEDESTRIAN ACCESS

Street-facing entrance	Required
Entrance spacing	100' max

Sec. 2.7.6. Major Arterial Frontage



SHARED ACCESS DRIVE

Separation	350' min
Distance after intersection	200' min
Distance before intersection	350' min
Throat depth	100' min

BUILDING SETBACKS

Street	10' min
--------	---------

PARKING SETBACKS

Street	15' min
--------	---------

STREETSCAPE

Curb zone	10' min
Tree planting type	Tree lawn
Tree spacing	35' on-center avg.
Clear pedestrian zone	6' min

STORY HEIGHT

	Residential	Non-residential
Ground floor elevation	2' min / 4' max	0' min / 2' max
Ground story height	9' min	14' min

TRANSPARENCY

Ground story	20% min	60% min
Upper story		20% min
Blank wall		50' max

PEDESTRIAN ACCESS

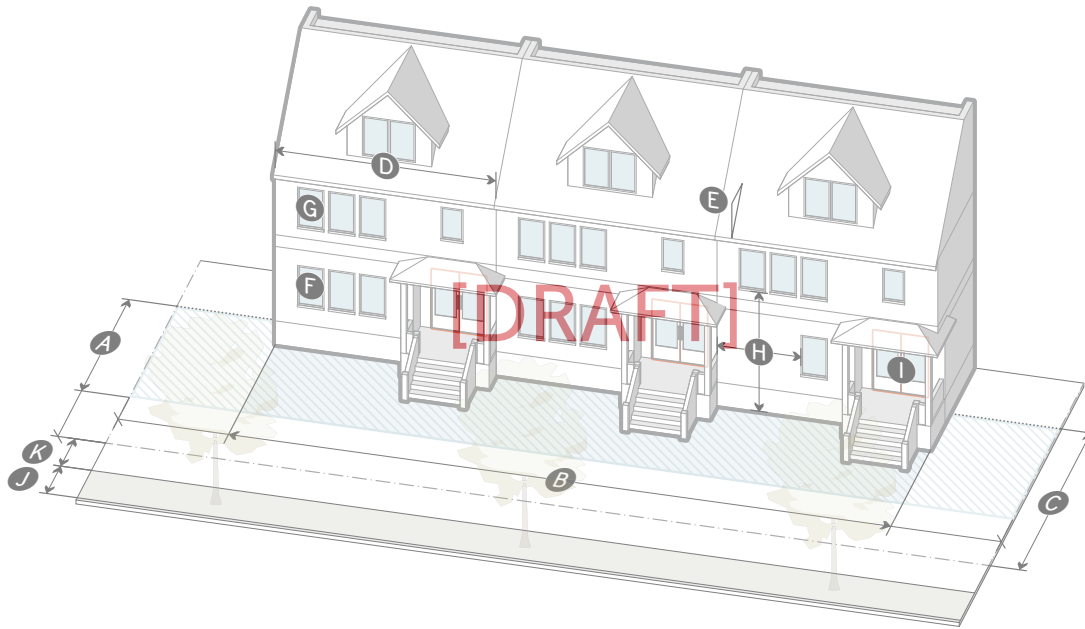
Street-facing entrance	Required
Entrance spacing	100' max

Sec. 2.7.7. **Half-Street Cross-Access** Frontage

[GRAPHIC]

	Residential	Non-residential
BUILDING SETBACKS		
Build-to zone	5' min/15' max	
Lot frontage	50% min	
PARKING SETBACKS		
Cross access easement	10' min	
BUILDING MASS		
Street-facing building length	n/a	
STREETSCAPE		
Curb zone	6' min	
Tree planting type	Tree lawn or grates	
Tree spacing	35' on-center avg.	
Clear pedestrian zone	8' min	
STORY HEIGHT		
Ground floor elevation	2' min / 4' max	0' min / 2' max
Ground story height	9' min	14' min
TRANSPARENCY		
Ground story	20% min	60% min
Upper story	20% min	
Blank wall	30' max	
PEDESTRIAN ACCESS		
Street-facing entrance	Required	
Entrance spacing	50' max	

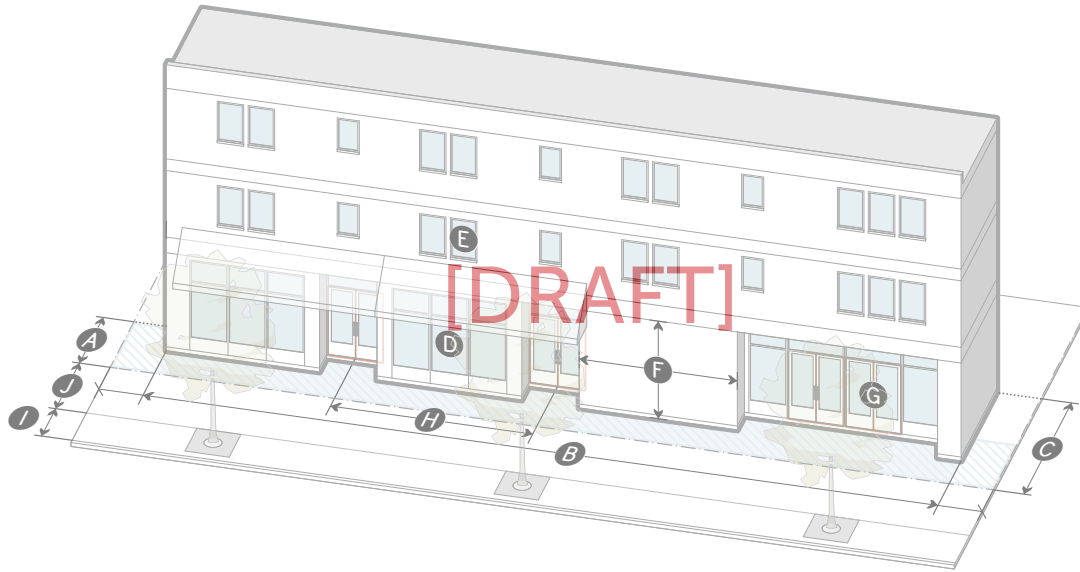
Sec. 2.7.8. Walkable Core Street Frontage



ACCESS DRIVE	
Separation	200' min
Distance after intersection	100' min
Distance before intersection	200' min
Throat depth	40' min
BUILDING SETBACKS	
Build-to zone	10' min/25' max
Lot frontage	75% min
PARKING SETBACKS	
Street	25' min
BUILDING MASS	
Street-facing building length	175' max
STREETSCAPE	
Curb zone	6' min
Tree planting type	Tree lawn or grates
Tree spacing	35' on-center avg.
Clear pedestrian zone	8' min

	Residential	Non-residential
STORY HEIGHT		
Ground floor elevation	2' min / 4' max	0' min / 2' max
Ground story height	9' min	14' min
TRANSPARENCY		
Ground story	20% min	40% min
Upper story	20% min	20% min
Blank wall	20' max	20' max
PEDESTRIAN ACCESS		
Street-facing entrance	Required	Required
Entrance spacing	30' max	30' max

Sec. 2.7.9. Village Core Street Frontage



ACCESS DRIVE

Separation	200' min
Distance after intersection	100' min
Distance before intersection	200' min
Throat depth	40' min

BUILDING SETBACKS

Build-to zone	0' min/10' max
Lot frontage	90% min

PARKING SETBACKS

Street	20' min
--------	---------

BUILDING MASS

Street-facing building length	n/a
-------------------------------	-----

STREETSCAPE

Curb zone	6' min
Tree planting type	Grates
Tree spacing	35' on-center avg.
Clear pedestrian zone	10' min

STORY HEIGHT

Ground floor elevation	0' min / 2' max
Ground story height	14' min

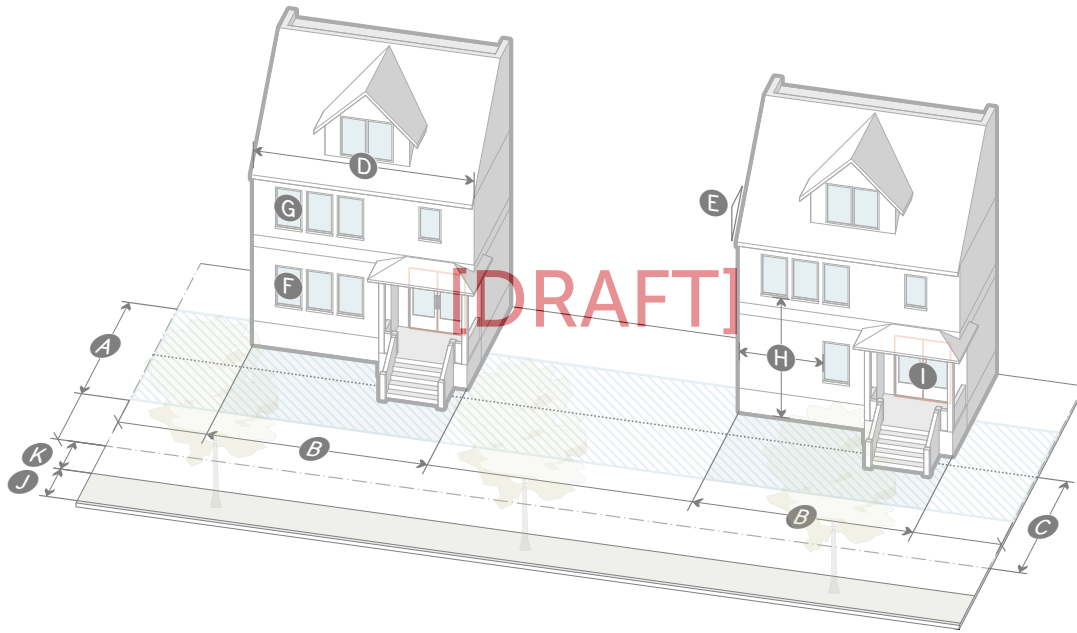
TRANSPARENCY

Ground story	70% min
Upper story	20% min
Blank wall	15' max

PEDESTRIAN ACCESS

Street-facing entrance	Required
Entrance spacing	30' max

Sec. 2.7.10. Residential Street Frontage



BUILDING SETBACKS

Build-to zone	10' min/30' max
Lot frontage	30% min

PARKING SETBACKS

Street	20' min
--------	---------

BUILDING MASS

Street-facing building length	40' max
Roof pitch	4:12 min/ 18:12 max

STREETSCAPE

Curb zone	6' min
Tree planting type	Tree lawn or grates
Tree spacing	35' on-center avg.
Clear pedestrian zone	6' min

STORY HEIGHT

Ground floor elevation	2' min / 4' max
Ground story height	9' min

TRANSPARENCY

Ground story	20% min
Upper story	20% min
Blank wall	25' max

PEDESTRIAN ACCESS

Street-facing entrance	Required
Entrance spacing	n/a

STREETSCAPE

Curb zone	6' min
Tree planting type	Tree lawn
Tree spacing	35' on-center avg.
Clear pedestrian zone	6' min

DIV. 2.8. RETROFIT TRANSITIONS

NEW

Sec. 2.8.1. Applicability

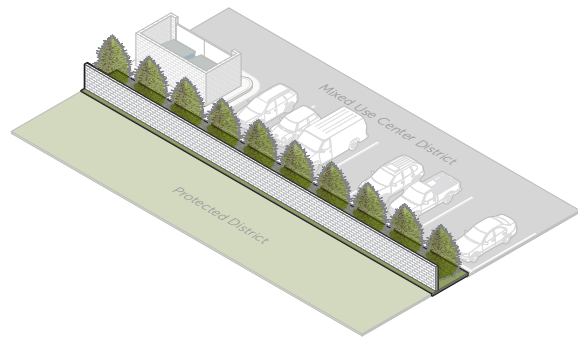
The transition rules apply when a Mixed Use District abuts one of the following districts:

- A. Rural Residential (R-R)
- B. Suburban Agriculture (S-A)
- C. Residential District One (RS-1)
- D. Residential District Two (RS-2)
- E. Residential District Three (RS-3)
- F. Cluster Residential Three (RC-3)

Sec. 2.8.2. Transitions

A. Shallow Lot

The Shallow Lot Transition is required for Shallow Corridor districts. Due to the limited depth, a narrower landscape buffer and less intensive height transition are required compared to the requirements for a lots with over 200 feet in depth.



B. Deep Lot

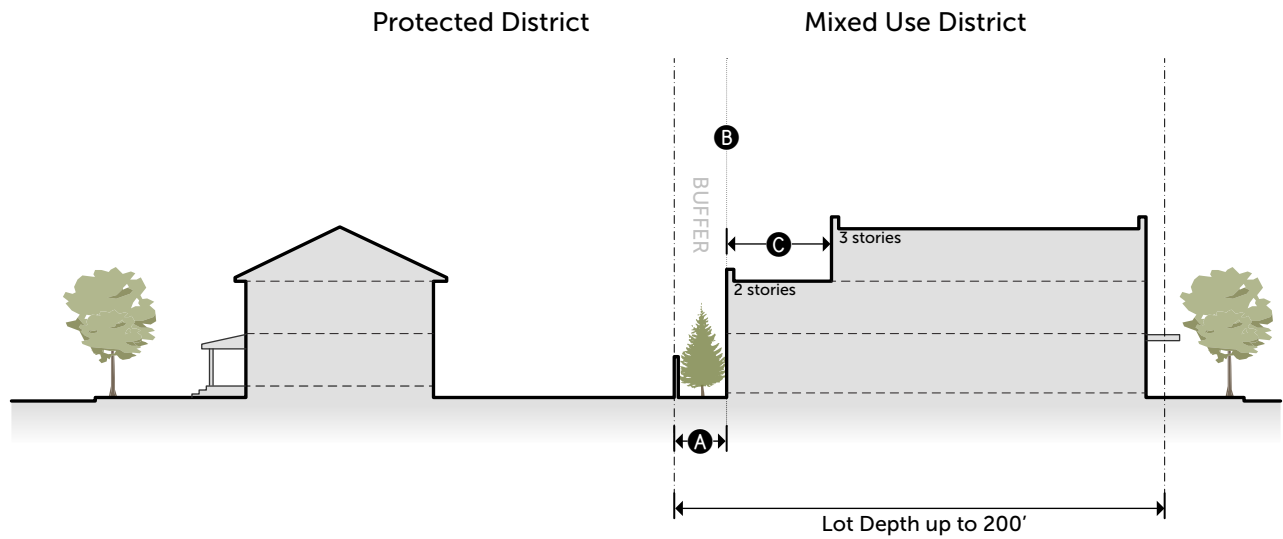
The Deep Lot Transition is required for Deep Corridor and Center districts. The Deep Lot Transition requires a wider landscape buffer and a more extensive height transition compared to requirements for shallow lot.



Sec. 2.8.3. Shallow Lot Transition

APPLICABILITY: SC-3

A. Shallow Lot Height Transition



BUFFER

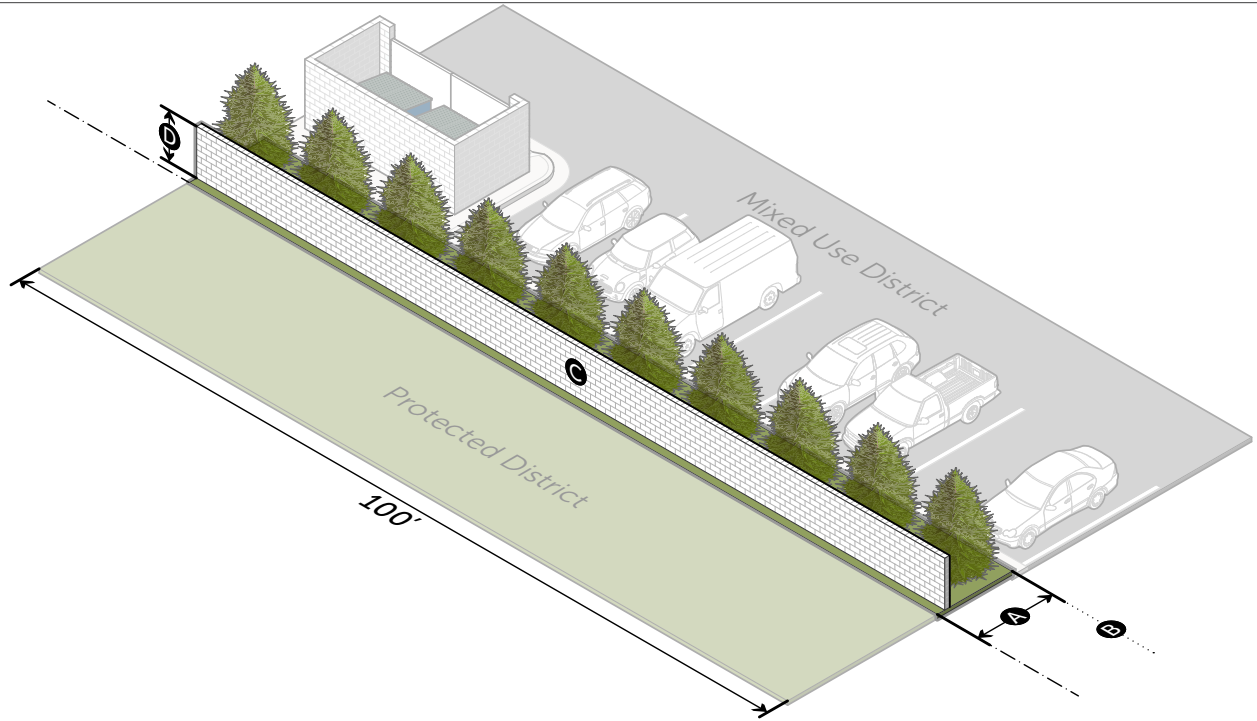
A Width 10' min

HEIGHT TRANSITION AREA

B Setbacks measured from edge of buffer area

C Above 2 stories/24' 20' min

B. Shallow Lot Landscape Transition



AREA

A	Width	10' min
B	Setbacks measured from edge of buffer area	

STRUCTURAL SCREENING

C	Opaque wall	Required
D	Height	6' min
Materials		
	Brick	◇
	Stone	◇
	Ornamental concrete	◇
	All other materials	--

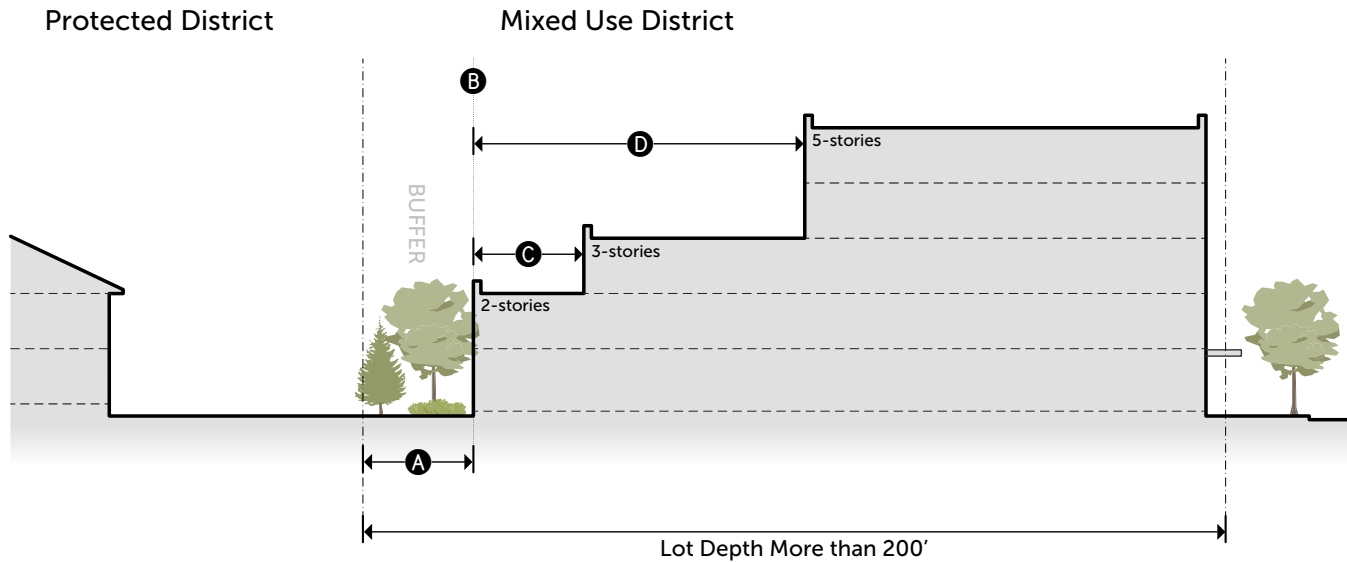
VEGETATION

	Evergreen tree	1:10 linear feet
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Sec. 2.8.4. Deep Lot Transition

APPLICABILITY: DC-5, CTR-5, CTR-8

A. Deep Lot Height Transition



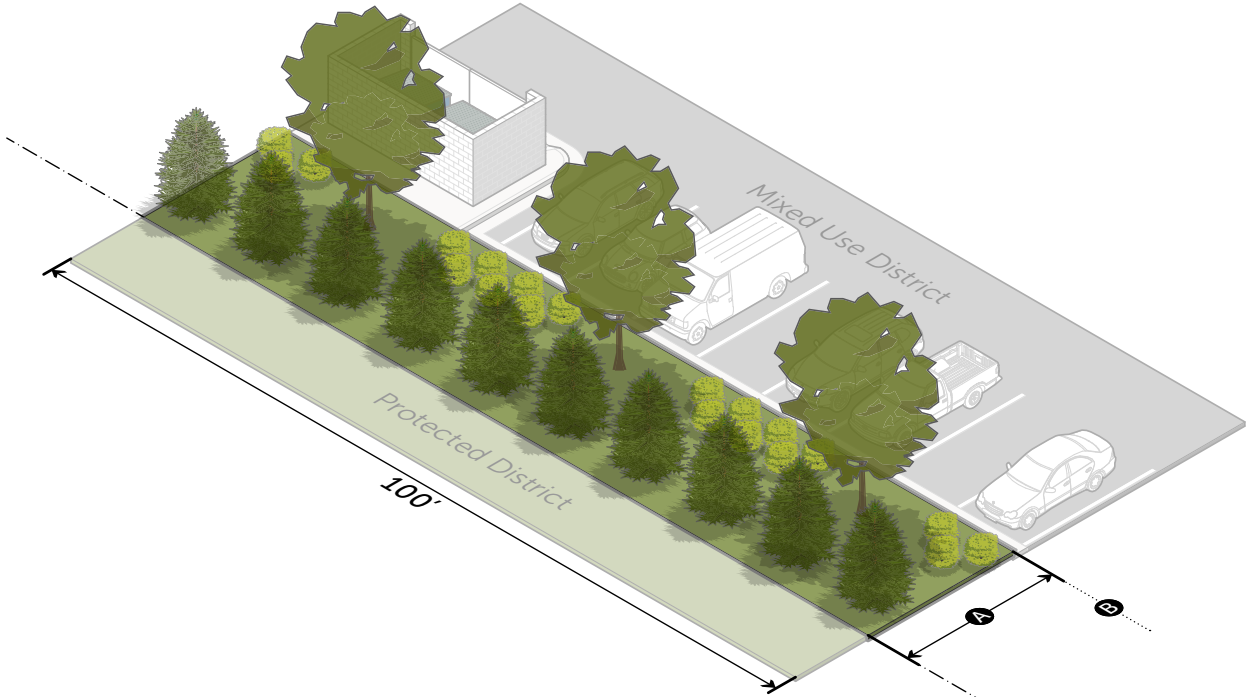
BUFFER

A	Width	20' min
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HEIGHT SETBACKS

B	Setbacks measured from edge of buffer area	
C	Above 2 stories/24'	20' min
D	Above 3 stories/35'	60' min

B. Deep Lot Landscape Transition



AREA

- A** Width 20' min
- B** Setbacks measured from edge of buffer area

VEGETATION

Shrub	1:5 linear feet
Evergreen tree	1:10 linear feet
Large deciduous tree	1:35 linear feet

[Intentionally Blank]

DIV. 2.9. **RETROFIT STREETS** **NEW**

Sec. 2.9.1. **Applicability**

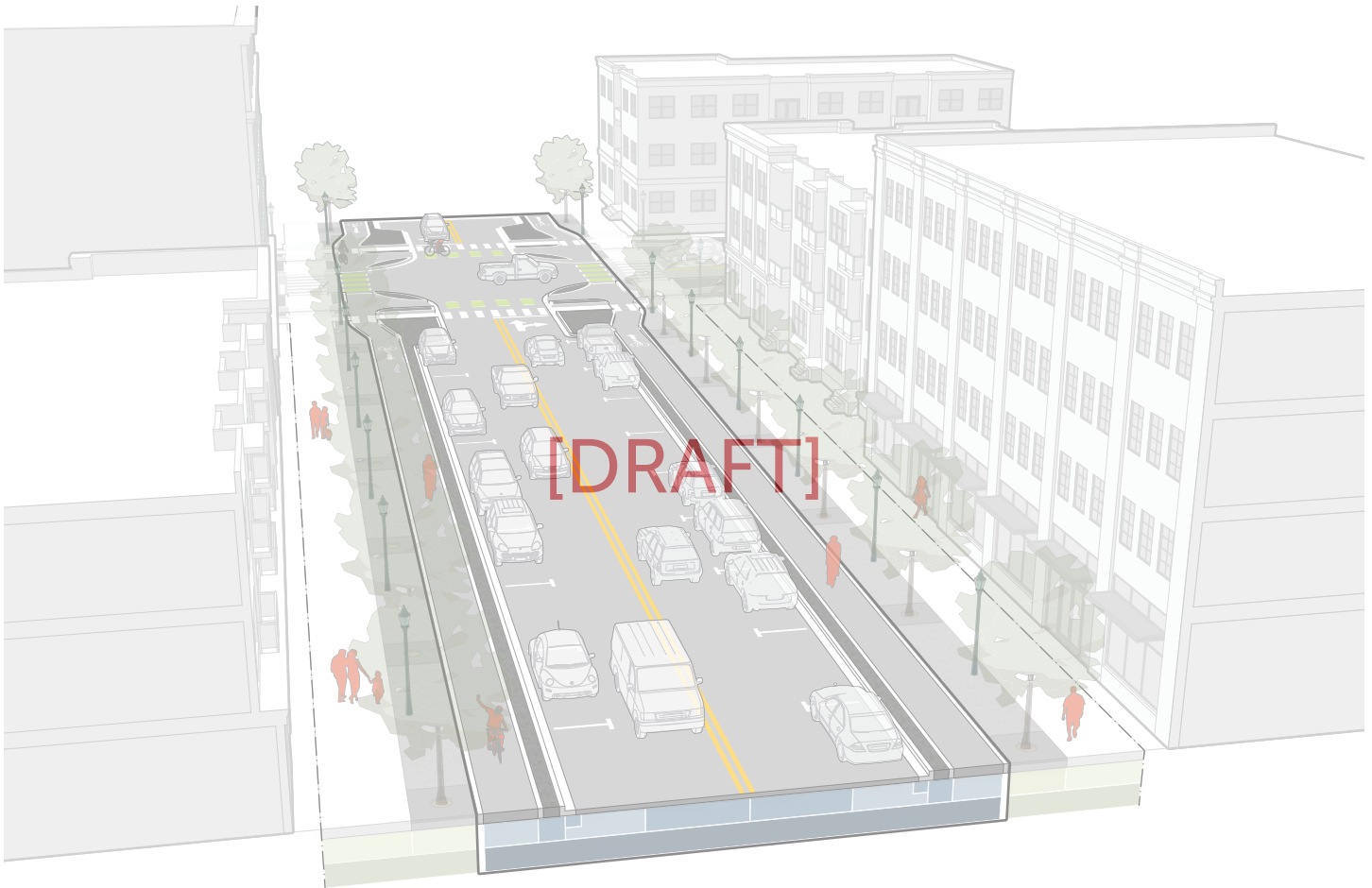
The street and easement standards apply to Retrofit Districts as indicated by the District standards.

Sec. 2.9.2. **Street Types**

The following street types are established.

- A. Core Street
- B. Core Half-Street
- C. Local Street
- D. Local Half Street
- E. Alley/Drive Lane

Sec. 2.9.3. **Core Street**



PUBLIC REALM

A Right-of-way width	60' min
B Travel lane configuration	36' min/38' max

CURB-TO-CURB

D Travel lane	9' min/10' max
E Parking lane	7.5' min/8.5' max
F Curb and gutter	24"

Sec. 2.9.5. **Core Half-Street**



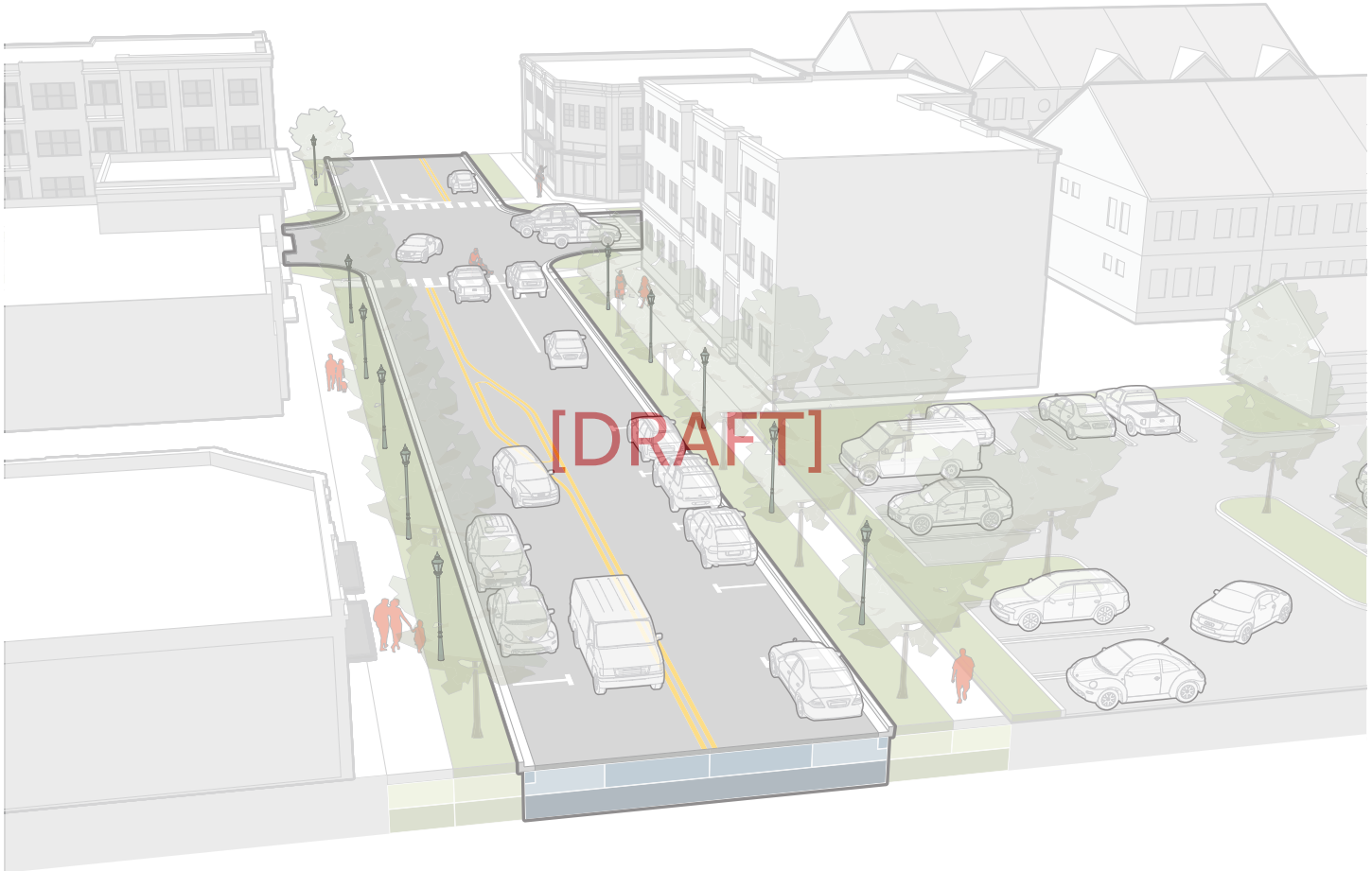
PUBLIC REALM

- A** Right-of-way width 42' min
- B** Curb-to edge of pavement 28' min

TRAVEL LANES

- D** Travel lane 9' min/10' max
- E** Parking lane 7.5' min/8.5' max
- F** Curb and gutter 24"

Sec. 2.9.7. **Local Street**



PUBLIC REALM

A Right-of-way width	60' min
B Curb-to-curb	36' min

CURB-TO-CURB

D Travel lane	9' min/10' max
E Parking lane	7.5' min/8.5' max
F Curb and gutter	24"

Sec. 2.9.8. **Local Half-Street**



PUBLIC REALM

A Right-of-way width	34' min
B Curb to edge of pavement	21' min

CURB-TO-CURB

D Travel lane	9' min/10' max
E Parking lane	7.5' min/8.5' max
F Curb and gutter	24"

Sec. 2.9.9. Alley/Drive



PUBLIC REALM

A	Right-of-way width	60' min
B	Curb-to-curb	36' min/38' max
C	Streetscape	12' min

CURB-TO-CURB

D	Travel lane	9' min/10' max
E	Parking lane	8' min/8.5' max
F	Curb and gutter	24"

DIV. 2.10. **OVERLAY DISTRICTS**

Sec. 2.10.1. **Airport Overlay (-A)**

[RESERVED]

DIV. 2.11. NEW COMMUNITY DISTRICT

Sec. 2.11.1. New Community District (NCD)

A. Purpose

To provide flexible land use and design regulations through the use of performance criteria so that small-to-large scale multi-use neighborhoods may be developed on relatively large tracts within the Town, in a manner which incorporates a variety of residential types and nonresidential uses and services. A New Community District (NCD) may contain both individual building sites and common property which are planned and developed as a unit. Among the purposes of this district are: the encouragement of innovation in residential development so that the growing demand for housing at all economic levels may be met by greater variety in type, design and siting of dwellings, the conservation and more efficient use of land in such developments and the encouragement and maintenance of high environmental quality throughout the development. This district encourages a similarly imaginative approach to the development of nonresidential uses in a NCD. To encourage the most skillful planning of parts of the community in accordance with the objectives of the Town Master Plan or its successors, to provide for the utilization of planning criteria in the arrangements of buildings related to common open space, to utilize topography and other site features to their best advantage and to obtain creative and coordinated designs, it is necessary to expand the scope of land planning and development beyond a concept of homogeneous uses and structures on individual lots within formally defined districts to the planning and development of larger areas with groups of structures to create a diversified and coordinated entity. Therefore, in lieu of zoning controls applicable in the standard zoning districts, §8-15 establishes procedures and this Section establishes substantive requirements under which a developer may prepare development plans particularly designed to meet these objectives.

B. Objectives

In order to carry out the intent of this section, a new community development shall achieve the following objectives:

1. A varied choice in the types of environment, occupancy tenure (e. g., cooperative, individual ownership, condominium, leasing), types and costs of housing, lot sizes and community facilities available to existing and potential town residents.
2. Extensive usable open space and recreation areas, appropriate in terms of location, size and suitability of intended function.
3. The provision of commercial, office or industrial uses of substantial real property tax productivity intended to support the financing of additional educational, municipal and other public services required as a result of the development.
4. Convenience in location of commercial and service areas.

5. The preservation of such features as trees, outstanding natural topography and geological features; the prevention of soil erosion; and the comprehensive design of stormwater retention and proper drainage systems.
6. A creative use of land and related physical development which allows an orderly transition of land from rural to urban uses.
7. An efficient use of land resulting in smaller networks of utilities and streets and lessened burden of traffic on streets and highways, thereby lowering utility and maintenance costs borne by new development.
8. Creation and preservation of natural and man-made features which will give increased environmental quality, encourage uses which will maintain high environmental quality and provide an attractive community design.
9. Guidance and control of development in flood hazard areas so that life and property both within and without such areas are protected.
10. Increased safety for all modes of travel, including pedestrian and bicycle.
11. An appropriate balancing or accommodation of the effect of major public or private development elsewhere in the town or its vicinity.
12. Sufficient civic and community facilities, carefully integrated with adjoining areas.
13. Provision for the orderly updating of long-term, large-scale development plans to reflect changing circumstances within an overall, town-approved planning framework.
14. A more desirable environment than would be possible through the strict application of other sections of this Zoning Ordinance.

C. **Substantive Criteria, Standards and Regulations**

Criteria, standards and regulations are hereby established with respect to planning of land and the arrangements of buildings and open spaces for new community development undertaken in a NCD, as set forth in this Section. Any inconsistent or contrary criteria, standards or regulations approved by the Town Board prior to the adoption of this Section in connection with a new community development undertaken by a public agency which has held a public hearing on such development shall take precedence over the requirements of this Section.

D. **Location of NCD**

The NCD shall be applicable to any area of the town where the petitioner can demonstrate, or the Town Board on its own initiative or upon recommendation of the Planning Board determines, that the characteristics of the proposed site will meet the objectives of this Section.

E. **Use Regulations**

1. **Use Classifications**

The emphasis of this Section is to permit rational and careful development of new patterns of blending uses, building types and construction methods. Strict adherence to formally defined and compartmented use districts or sectors is contrary to the purposes of this Section. However,

any use permitted in the NCD shall be suitable for the character and related to the needs of the proposed development and shall not adversely affect the surrounding development. To this end, uses permitted in a NCD are grouped into use classifications. Uses shall be located in such a manner as to best serve residents, employees and visitors to the new community. A use area, as outlined on a development plan by references to the appropriate classification, shall be primarily devoted to uses specified for that area, but classifications described in paragraphs (2), (3) and (4) below may include uses specified in any classification having a lower number. The use of classifications are as follows:

a. Major Open Space

This classification includes: large areas of land in a natural state; areas for active and passive recreation; parks and large landscaped or wooded areas; stormwater storage and runoff areas; preservation of outstanding geologic and topographic features; public or private recreation, education, community and cultural facilities; conservation facilities and areas; and pedestrian and bicycle circulation systems. Special limited commercial services and facilities compatible with the above uses may be included.

b. Neighborhood

This classification includes primarily residential areas designed to provide living space for families and individuals. Ancillary uses designed to conveniently serve residents may be located within them. The classification includes:

- i. Residences and dwelling units of every type, except as otherwise specified in this subsection. In developing a balanced community the use of a variety of housing types, styles and construction methods shall be deemed most in keeping with this Section.
- ii. Small convenience retail and service facilities, except for automobile drive-in restaurants, and ancillary office facilities designed to serve the needs of residents of the neighborhood.
[1]
- iii. Public and quasi-public facilities, including schools and day-care centers, religious buildings and other community facilities.
- iv. Recreation facilities, open space areas, and personal training facilities.
- v. Special limited commercial services and facilities not already included in the above uses and storage yards and open equipment structures compatible with the above uses or suitably screened, fenced and buffered from adjacent uses in accordance with the performance standards in § 5-2-7I may be included. Storage yards for house trailers, boats and similar equipment and for open space maintenance equipment are included in this classification.

c. Local Center

This classification includes uses primarily designed to serve residents within the relatively close environs of the center. Uses may include retail sales and service facilities, including uses enumerated in paragraphs (1) and (2) above and automobile-oriented retail sales and service facilities, including gasoline service stations, spaced and otherwise regulated according to

this ordinance, business, professional and community service office facilities, hotels and motels, restaurants, taverns, hospitals, medical buildings, clinics, convalescent, old-age or nursing homes or residences, funeral homes, nonprofit institutions for charitable purposes, gymnasiums or health club, veterinary clinics or cat boarding facilities with kennel in enclosed building, film and performing arts theaters, public and quasi-public facilities enumerated in paragraphs (1) and (2) above and public or private parking facilities. Dormitories are permitted subject to the issuance of a special use permit by the Town Board based on criteria found in Section 5-2-7K. Automobile drive-in restaurants shall be located in organized retail areas or motorist service areas, not as independent establishments.

d. General Commercial

This classification includes regional facilities serving residents from outside the new community as those within it. Permitted uses include comparison retail establishments, radio or television stations, public or private parking structures, public or private office facilities, trade or industrial schools, print shops, passenger terminals, commercial recreation activities subject to constraints as outlined in the Town Amusement Ordinance.

e. Restricted Industrial

Uses in this classification shall be designed to provide space for office, research and light manufacturing activities which are compatible with nearby open space areas and with residential and commercial development. Permitted research and manufacturing uses shall include those uses allowed in the RD, ST, and GI districts as set forth in this Ordinance.

2. Use Mixture

a. Residential Dwelling Unit Distribution

There shall be a variety of housing types within each NCD. Single-family detached dwelling units, or single-family attached dwelling units connected by nonhabitable structures, contemplated by the development plan shall comprise a minimum of 25 percent of the total dwelling units contemplated by the development plan.

b. Commercial Use

Each new community development shall have adequate convenience commercial services and facilities to serve the residents of the community. Commercial uses in neighborhood and local center areas shall be provided in appropriate relation to the location and concentration of dwelling units to be served thereby. The floor area of such commercial facilities will be generally guided by a standard of not less than 25 square feet of organized shopping and convenience retail per dwelling unit and an additional 15 square feet of convenience service retail per dwelling unit, measured according to the area served by such facilities, whether inside or outside the NCD.

c. Open Space Use

In any NCD, considered in its entirety, a minimum of 25 percent of the total land area to be developed by the new community developer or designee, in accordance with the

development plan, shall be in open space. At least 70 percent of this total open space shall be in private ownership open to the public or in public or common ownership. At least 40 percent of the total open space, either in a natural state or improved as permitted by and meeting the standards of this Section, shall be offered for dedication or other public entity for recreation and other open space uses available for use by the public and acceptable to the Town Board or other public entity and to the entity which was the principal owner of the new community site, as contemplated in §8-15, at the time of Town Board approval of the development plan (or to the designee of such entity). Offers for dedication or other disposition of major open space for public use may be made at any time after approval of the development plan. Part of the public or common open space shall be in neighborhood areas. For the purpose of this calculation, areas covered by roads, building or parking areas shall not be counted as open space, except for buildings, parts of buildings or parking lots providing natural preservation, recreational or cultural services in conjunction with adjoining open space. Lakes or other water areas may not occupy so large a proportion of the major common open space that other open space for recreational uses cannot be adequately provided for.

3. Prohibited Uses

- a. Junkyard;
- b. Signs other than those permitted in § 5-2-7J;
- c. Used automobile and/or trailer vehicle sales agency;
- d. Commercial drive-in film theater;
- e. Individually sited mobile home or home trailer;
- f. Fraternities and Sororities;
- g. Any use described in or involving or directly or indirectly causing any condition or activity described in § 5-2-7I related to a light industrial use; or
- h. Any other use contemplated in this Section.

4. Unlisted Uses

Uses not specifically enumerated above nor specifically prohibited may be permitted with the approval of the Town Board after receiving a recommendation from the Planning Board as part of the site plan review, so long as the uses in question are compatible with adjacent uses and are consistent with the intent of the development plan.

F. Dimensional Standards

1. New Community Area Density

The overall residential density of a NCD shall not exceed five dwelling units per gross acre; however, the overall density may be increased, subject to the approval of the Town Board, to correspond with any increase indicated on the officially adopted Town Master Plan. This density shall be calculated based on the NCD, excluding lands and units not owned or controlled by the

petitioner, and restricted industrial and general commercial areas, but shall include lands and units owned or controlled by any public entity.

2. Dwelling Unit Area

All dwelling units and rooms included in a dwelling unit shall have sufficient floor area to satisfy the applicable minimum floor area requirements of the State Building Construction Code or the Town Building Code, whichever may be applicable.

3. Minimum Area

The minimum area required to qualify for a NCD shall be 1,000 contiguous acres of land. For purposes of this subsection, lands separated by streams or drainage courses, highways, streets or other public or private rights-of-way shall be deemed contiguous. Boundaries should assume reasonably regular configurations, taking advantage of natural features, public rights-of-way and other clearly defined features as outer perimeters, in order to facilitate buffering between the NCD and adjacent areas and in order to minimize the development obstacles created by sharply irregular boundaries resulting from noncontiguous ownership patterns.

4. Building Arrangements

The design criteria set forth in this Section are intended to provide desirable latitude and freedom to encourage variety in the arrangement of the bulk and shape of buildings, open space and landscape features. Therefore, in lieu of specific minimum lot size or frontage, minimum percentage of building coverage, building setback and spacing, yard requirements, building height and shape and other similar considerations, the requirements of this subsection D shall apply. Dwellings may be arranged in various groups, courts, combinations, sequences or clusters with open spaces organized and related to the dwellings to form a unified composition of buildings and space. Landscape features, lots, yards, building arrangement, setback, spacing, height and shape shall be designed in a manner to assure the following:

- a. Proper light, air and views for the residents.
- b. Safety in the accommodation of pedestrian and vehicular circulation and vehicular storage and service.
- c. Usability of and convenient access to open space by residents of adjacent dwellings without loss of visual and auditory privacy for residents of such dwellings.
- d. Availability of open land for landscaped features, recreation or other private uses.
- e. Building yards designed so as to relate to the amount, layout and outlook of the space within dwelling units as well as within the yard.
- f. Privacy between adjacent buildings and intersecting wings of buildings, from streets, parking and recreation areas.
- g. The creation of a variety of common open spaces and private areas through the planning of landscape features such as walls, fences, hedges, and other features.

G. Development Standards

1. Off-Street Parking, Loading, and Stacking

The design criteria set forth in this Section are intended to provide desirable latitude and freedom to encourage variety in the location, arrangement and type of uses, to encourage convenience in accessibility to these uses through provision of pedestrian and bicycle pathways and public transportation services and to achieve the efficient sharing of parking and loading facilities by multiple uses. Therefore, in lieu of specific minimum parking and loading requirements and other similar considerations, the following performance standards shall apply.

- a. Parking facilities shall be landscaped and screened from public view to the extent necessary to eliminate unsightliness and monotony of parked cars;
- b. Pedestrian connection between parking areas and buildings shall be along walkways to the extent necessary to assure pedestrian safety;
- c. Parking facilities shall be designed with careful regard to orderly arrangement, topography, landscaping and ease of access and shall be developed as an integral part of an overall site design;
- d. Any above-grade loading facility shall be screened from public view to the extent necessary to eliminate unsightliness and should be separate from private vehicles and pedestrians where feasible;
- e. The design of buildings and parking facilities shall take advantage of the topography of the site where appropriate to provide separate levels of access;
- f. Parking areas in all use areas except open space shall meet the requirements of § 7-1;
- g. Off-street parking, loading, and stacking spaces shall be provided for all new buildings at the time of erection and for all enlargements of existing buildings. A parking space shall measure not less than nine by 19 feet, exclusive of designated access drives and designated walks, and shall be maintained in usable shape and good condition; and
- h. Off-street parking, loading, and stacking spaces shall be provided so as to prevent overflow of parked or standing vehicles onto public or common vehicular or pedestrian rights-of-way.

2. Landscaping, Buffering and Screening

Landscaping plans shall meet the following standards:

- a. Landscaping shall provide privacy and screening between uses, with visual noise and air quality factors considered;
- b. Landscaping shall contribute to prevention of water runoff and erosion problems. Temporary or permanent protection shall be provided during construction to prevent such problems;
- c. Landscape treatment for public and private plazas, roads, paths, service and parking areas shall be designed as an integral part of an entire project and shall combine with walks and street surfaces, and such requirements shall be in lieu of any other town requirement for trees in public street rights-of-way;

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- d. The area covered by impervious surfaces such as buildings and paved areas shall be accompanied by planted areas as well as other features to hold or carry stormwater runoff. Outdoor planted or grassed areas within or adjacent to parking lots shall be not less than five percent of the total vehicular area in parking lots designed for 25 cars or more and shall be suitably distributed so as to relieve any unsightliness and monotony of parked cars;
- e. Landscape materials shall be appropriate to the growing conditions on the site and the town's environment;
- f. Natural features such as streams, rock, outcrops, escarpments, marshlands, wetlands, topsoil, trees and shrubs, natural contours and outstanding vegetational, topographical and geological features shall be preserved and incorporated in the open space areas and in the landscaping of the development;
- g. Plastic or other types of artificial plantings or vegetation shall not be permitted unless approved by the Town Board; and
- h. Trees shall be planted adjacent to all residential units at the frequency of no less than one tree per residential unit unless trees previously existent on the unit site are preserved. Trees to be planted throughout the district and along the vehicular ways shall include both deciduous and coniferous species in adequate density and design to provide year-round benefit of such plantings. Trees shall be of numerous species as to minimize the impact and spread of disease.
- i. Visual and noise screening devices shall be designed and maintained to serve their intended purposes set forth in this Section. Artificial planting materials shall not be allowed unless approved by the Town Board. Landscape screening should be given priority where effective, easily maintained and botanically feasible.

3. Topography and Site Appearance

New community developments shall be designed to take maximum advantage of the topography of the land in order to utilize the natural contours, to provide for water storage and control of water runoff, to protect natural drainage courses, to economize in the construction of utilities, to reduce the amount of grading and to maximize the conservation of trees and topsoil. Significant natural features and other characteristics of the site shall be preserved and incorporated as distinctive features of the development.

4. Local Circulation System

Both vehicular and pedestrian access shall be provided to each dwelling, school, recreation area and commercial area.

a. Vehicular

Dwellings and other buildings shall be served by streets, drives or emergency accessways planned so as to assure access by service and emergency vehicles. The vehicular circulation system and parking facilities shall also be designed to fully accommodate motor vehicles with safety and efficiency without allowing them to dominate or destroy the form and character of the area, with screening and buffering as may be required to satisfy the environmental

standards of this Section. Driveways and streets serving group and cluster developments shall be connected to collector and arterial streets at locations where traffic can be controlled and operated effectively and safely with minimum interference to the capacity of the arterial streets at locations where traffic can be controlled and operated effectively and safely with minimum interference to the capacity of the arterial and collector streets, bicycle routes and pedestrian ways.

There shall be provision for safe bicycling routes throughout the district which may be coincident with pedestrian ways but which shall be separated from the motorized vehicle system wherever feasible.

The right-of-way and pavement widths, locations and designs for private ways, roads and alleys shall conform to generally accepted planning and engineering practices, taking into account the estimated needs of the full proposed development. All roads to be dedicated shall be designed and constructed to town specifications or other comparably strict standards.

All transportation facilities provided and designed by the new community developer adjacent to residential areas shall be designed to provide noise buffer systems such that the ambient noise level from the normal motorized vehicular use of such facilities shall be guided by applicable governmental requirements. Vegetation used in such buffer systems shall be suitable to survive the effect of the adjacent vehicular activity within the right-of-way and the climatic conditions of the area. Alternatively, noise tolerant uses may be located adjacent to the right-of-way.

b. Pedestrian

Pedestrian ways shall connect residential areas with other residential areas, community facilities, schools, recreational areas, commercial areas and public transportation. The system of pedestrian walks, malls and landscaped spaces shall be of such extent and the elements of such system shall be so distributed in location and number so as to assure safety of pedestrians from vehicular traffic and encourage pedestrian travel within such system instead of in vehicular rights-of-way without restraints imposed by public, private or common ownerships in a manner inconsistent with the purposes of this subsection. Major pedestrian walks, malls and public transportation loading places, where feasible, shall be separated from general vehicle circulation. Landscaped, paved and comfortably graded pedestrian walks shall be provided along the lines of the most intense use, particularly from building entrances to adjacent buildings, play areas, parking areas and streets. Pedestrian walks shall emphasize desirable views of new and existing development and land areas. Sidewalk, pathway and bikeway width, location and materials shall be governed by the applicable provisions of this Section in lieu of all other local laws, ordinances, rules, regulations and requirements of the town. Buildings shall be arranged to minimize pedestrian exposure to vehicular traffic.

5. Open Space

As used in this Section, the term "open space" includes uncovered and unpaved lands or water areas, in public ownership or in common or other private ownership, except lots under single-

family ownership. Lands covered by structures or other improvements may also be deemed to constitute open space under the limited conditions specified in this Section. Large land areas devoted to the uses specified in 5-2-5A(1) shall also be considered open space; and open space may and, where required by this Section, shall be located in areas devoted to any use classification described in 5-2-5A. Open space acceptable for approval under the provisions of this Section shall meet the following standards:

- a. The public and common open space shall be located and organized to be readily accessible by foot and bicycle to residential populations served thereby, preferably without their having to cross limited access and arterial roadways. In addition, appropriate access and parking for vehicles shall be provided at those locations where town-wide use is anticipated,
- b. The location, condition, size and configuration of the open space shall be suitable for its use as contemplated in this Article and as proposed in the development plan and/or site plan, such as for recreation, amenity, drainage, flood plain, stormwater storage, protection of water quality, connectors between major open space areas, preservation of wildlife, woodlands, wetlands and outstanding natural features, as well as other uses permitted under 5-2-5A(1) above. Such proposed uses shall be appropriate to the scale and character of the new community, considering its size, density, expected population, topography and the number and types of dwelling units or employment sites to be provided. The use of a piece of open space land for more than one of these open space uses shall be encouraged, yet a balance of such uses shall be maintained such that, for example, all of the open space shall not be buffers along noisy transportation corridors but shall include areas suitable for quiet respite.
- c. Open space shall be suitably improved for its intended use, but open space containing natural features worthy of preservation may be left unimproved. The buildings, structures and improvements which are permitted in the open space shall be compatible with the natural environment and appropriate to the uses which are proposed for the open space.

6. Common Open Space

- a. The continued use of common open space for the purposes contemplated in this Section shall be assured through appropriate deed restrictions which shall include a provision that such open space use shall not be materially altered or abridged without the approval of the Town Board.
- b. Satisfactory arrangements shall be made for the improvement, operation and maintenance of such common open space and facilities. The developer shall provide for and establish an organization for the ownership, operation and maintenance of common open space. In the event that the common open space is not maintained in a manner to avoid becoming unsightly or a nuisance to the public, the town may undertake the necessary maintenance and assess the owners of said common open space.
- c. In reviewing the organization for the ownership and maintenance of any common open space, the Planning Board shall consider, in addition to other applicable requirements of this Section, the following:
 - i. Time when organization is to be created;

- ii. Mandatory or automatic nature of membership in the organization by residents;
 - iii. Permanence of arrangements intended to assure continued use of lands as common open space;
 - iv. The liability of the organization for insurance, taxes and maintenance of all facilities;
 - v. Provision for pro rata sharing of costs and assessments;
 - vi. The capacity of the organization to administer common facilities; and
 - vii. The desirability of serving residents from adjoining areas of development.
- d. As used in this Section, the term "common open space" shall mean a parcel or parcels of land or an area of water or a combination of land and water within the site designated for a NCD, privately owned and designed and intended for the use and enjoyment of two or more households residing in the NCD or in specified portions of the district, or other users if permitted by the owners of the common open space. Common open space may contain such structures and improvements as are necessary and appropriate for the benefit and enjoyment of persons served by such common open space.

7. Public Open Space

The standards for the Planning Board's determination whether to recommend Town Board approval of an offer for dedication or other disposition to the town or other public entity of public open space lands shall, without excluding any other applicable requirements of this Section, include the following:

- a. The need for public open space in the NCD. In determining the manner of public ownership, the usage by the town population outside the NCD shall be considered.
- b. The potential for an open space connection with other public open space areas.
- c. The desirability of public access due to the special physical and biological characteristics of the area which make it suitable for public open space uses.
- d. The desirability of public acquisition of floodways, drainageways and areas subject to flooding for water management and recreational uses.
- e. Review and acceptability of covenants or similar provisions proposed for inclusion in the dedication instrument, intended to assure that public use remains consistent with the objectives of the development plan and site plan.

8. Boundary Treatment

The design of improvements and landscaping along the boundaries of a NCD should, to the extent possible, be visually harmonious and functionally compatible with adjoining development. Extensive parking areas, service areas and other features within the NCD and likely to have adverse effects on surrounding property (due, e.g., to adverse views, lights, noise) shall be screened against viewing from first stories outside the district. Similar screening shall also be provided to protect the new community from such adverse effects emanating from outside the NCD.

9. Underground Utilities

New public and private utility lines and those to be relocated or replaced shall be generally underground.

10. Aesthetics

- a. Materials and design of paving, lighting fixtures, retaining walls, fences, curbs, benches, etc., shall be of good appearance and easily maintained.
- b. The sides and rear of all buildings shall be designed in such manner as to avoid undue sacrifice of amenity and design values when viewed from side and rear vantage points.

11. Performance Standards

Without limiting the effect of any state or local law, ordinance or regulation which may be applicable to buildings and structures in a NCD and their effect on the comfort and repose of the community, this Section imposes on new community uses additional performance standards set forth below. Uses in a NCD shall comply with such performance standards as a precondition of occupancy and use. Any use already established in such districts shall not be altered, added to or otherwise modified so as to conflict with, or further conflict with, the performance standards that follow. Such conflict shall be corrected as a precondition of conducting such altered, augmented or modified use.

a. Enclosure

All permitted principal and accessory uses and operations which, as a result of not being enclosed, would constitute a nuisance or offense beyond the lot line or which, as a result of not being enclosed, would conflict with any of the specific performance standards set forth in this subsection shall be performed wholly within an enclosed building or buildings.

b. Residential Outside Storage

Outside storage or parking of commercial and recreation vehicles, camper bodies, boats and trailers in neighborhood areas on lands occupied for residential purposes shall be prohibited.

c. Dust and Smoke

The emission of smoke, soot, fly ash fumes, dust and other types of air pollution borne by the wind shall be controlled so that the rate of emission and quantity deposited beyond the lot shall not be detrimental to or endanger the public health, safety, comfort, welfare or adversely affect property values and shall not exceed the amount permitted by other codes of the state, county or town.

d. Odorous Matter

The emission of odorous matter in such quantities as to produce a public nuisance or hazard beyond the lot occupied by the use shall not be permitted.

e. Toxic or Noxious Matter

The emission of toxic, noxious or corrosive fumes or gases which would be demonstrably injurious to property, vegetation, animals or human health at or beyond the boundaries of the lot occupied by the use shall not be permitted.

f. Noise

The sound pressure level as measured at the edge of a lot and which is produced by a mechanical, electrical or vehicular operation on the lot, where said lot is adjacent to a residential area, shall not exceed the average intensity of the street traffic noise in that residential area. In any event, no sound shall have objectionable intermittence, volume, beat frequency or shrillness characteristics.

g. Vibration

Vibrations shall not be permitted beyond the lot line occupied by the use which would be noticeable without the aid of instruments or detrimental to health.

h. Radioactive or Electrical Disturbances

Radioactive emission or electromagnetic radiation disturbances which adversely affect any person or equipment at or beyond the boundaries of the property shall not be permitted.

i. Incineration Facilities

All incineration facilities shall be enclosed within an approved structure and shall be provided with devices for prevention of emission of smoke, odors, chemical or particulate matters and shall conform to the regulations of Title 6 NYCRR, Part 219, Incinerators, or any applicable state or county requirements.

j. Waste Materials

No garbage, rubbish, waste matter or empty containers shall be permitted outside of buildings except in approved containers awaiting pickup within 24 hours. Liquid wastes shall not be discharged into an open body of water or a sewer unless treated or controlled so that the amount of solid substances, oils, grease, acids, alkalines and other chemicals shall not exceed the amount permitted by other codes of the federal, state, county or town governments. Damages resulting from accidental spoilage or emissions of solid, liquid or gaseous waste shall be the responsibility of the offenders.

12. Signs

- a. Freestanding signs in any NCD shall be limited to traffic and pedestrian directional and control signs, signs identifying uses as permitted on the site plan and street signs. Traffic signs and devices shall meet state requirements. Any illuminated sign visible from any public street or from adjoining property used for residential purposes shall be so shaded, shielded, directed or maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect neighboring premises nor the safe vision of operators of vehicles moving on public roads or highways. Signs shall be designed as an integral part of a comprehensive site and

landscape plan which shall include a sign system specifying the general type, design, size and location of all signs and all sign controls to be instituted by the new community developer.

- b. Within a NCD, this subsection shall be applicable in lieu of other town ordinances pertaining to the size, location and appearance of signs.

13. Dormitories

The Town Board shall find that any proposed dormitories in NCD are consistent with the following:

- a. The dormitory is located either on the campus or within two (2) miles of the institution it will serve.
- b. Clear and safe pedestrian, bicycle and vehicular connections to the campus it will serve and retail shops and services are available.
- c. Off-street parking consistent with such requirements outside the New Community District are available.
- d. The dormitory will not create traffic and circulation conflicts and/or congestion.
- e. Does not create a concentration of dormitories that will adversely impact surrounding neighborhoods.
- f. Substantial landscape buffers, heavily planted with a mix of deciduous and coniferous trees, is provided for dormitories located either adjacent to or in close proximity to any residences.
- g. The height, density, physical layout, and architectural design is consistent with surrounding development, both within and outside of the New Community District.

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PART 3.

MEASUREMENTS

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DIV. 3.1. RULES FOR ALL DISTRICTS

Sec. 3.1.1. **Lot**

A. **Lot Area**

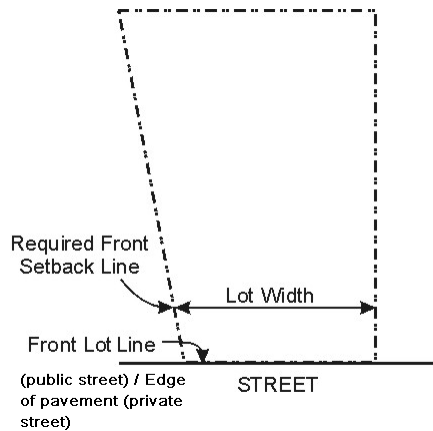
The contiguous land area included within the lot lines. Lot area does not include existing or proposed right-of-way, whether dedicated or not dedicated to public use.

B. **Area Per Dwelling**

The required amount of lot area per dwelling unit.

C. **Lot Width**

The horizontal width of a lot measured along the front setback line.



D. **Primary and Side Street Designation**

1. Where only one street abuts a lot, that street is considered a primary street.
2. A multiple street frontage lot must designate at least one primary street. A lot may have more than one primary street. The Zoning Enforcement Officer will determine which streets are primary streets based on:
 - a. The street with the highest classification;
 - b. The established orientation of the block;
 - c. The street abutting the longest face of the block;
 - d. The street parallel to an alley within the block;
 - e. The street that the lot takes its address from;
 - f. The pedestrian orientation of adjacent or abutting development, existing or proposed; and
 - g. Whether the street faces an important open space (park, plaza or paseo).

E. **Outdoor Amenity Space**

1. **General**

- a. Outdoor amenity space is common outdoor area provided in a development for use by all of its occupants for social and recreational activities. Outdoor amenity space may also be provided for use by the general public, in addition to occupants of the development.
- b. Examples of outdoor amenity space include swimming pools, playgrounds, sport courts, dog parks, gardens, community gardens, parks, greens, pavilions, seating areas, plazas, common balconies, rooftop decks or rooftop gardens.

2. **Standards**

- a. Required outdoor amenity space must be provided on the lot and be accessible as outdoor space. A required landscape transition may not be used to meet the outdoor amenity space requirement.
- b. Required outdoor amenity space may be enclosed on two sides or less by walls (with or without a solid roof cover) or enclosed on three sides by walls without a solid roof cover.
- c. Required outdoor amenity space may be located at or above grade.
- d. Required outdoor amenity space may be met in one contiguous outdoor area or in multiple outdoor areas on a lot and must have a minimum area of 225 square feet with no dimension less than 15 feet.
- e. Required outdoor amenity space must not be parked or driven upon, except for emergency access and permitted temporary events.
- f. At least 50% of the total amount of required outdoor amenity space at grade and 25% of required outdoor amenity space above grade must be planted with groundcover, shrubs or trees.
- g. Seating must be provided at the rate of 1 seat for every 500 square feet or fraction of 500 square feet. Seats may be permanent or movable. Two linear feet of bench or seat wall equals one seat.

Sec. 3.1.2. **Site**

A. **Area**

Site area is the contiguous land area included within the site. Site area includes internal (on-site) existing or proposed right-of-way, whether dedicated or not dedicated to public use.

B. **Number of Lots**

The total number of lots required on a site.

C. **Width**

The horizontal width measured along the site boundary setback line.

D. **Recreation Area**

The percentage of gross site area that must be devoted to facilities for active outdoor sports or recreation, including, but not limited to, basketball, baseball, football, soccer, ice skating, tennis or swimming.

E. **Site Boundary Setback**

A required setback from the boundary lot lines of the site.

F. **Unified Developments**

Unified Developments are allowed in all nonresidential districts. Reciprocal agreements providing for the establishment, operation, use and maintenance of common facilities and features are required and ~~shall not thereafter must not~~ be modified or rescinded without consent by the Town.

Sec. 3.1.3. **Coverage**

A. **Building Coverage**

The percentage of the lot covered by both the principal and accessory structures. This term does not include other impervious surfaces such as driveways. ~~Measured how?~~

Sec. 3.1.4. **Setbacks**

A. **Measurement of Setbacks**

1. A setback is measured at a right angle (perpendicular) to the lot line.
2. Where street right-of-way dedication occurs, all setbacks are measured from the final property line.
3. The Zoning Enforcement Officer will determine how setbacks apply to irregularly-shaped lots.

B. **Front Yard**

1. An open space extending the full width of the lot between the front lot line abutting a public right-of-way or the edge of the pavement abutting a private street and the structure setback line as established by this Ordinance.
2. ~~In no case shall~~ A structure is not allowed to encroach into an easement area established for a private street.

C. **Side Yard**

An open space extending from the front yard to the rear yard and of a minimum width established by this Ordinance; ~~the width shall be measured at right angles to its side lot line.~~

D. **Rear Yard**

The yard extending from the rear wall of the structure to the rear lot line across the full width of the structure.

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E. **Accessory Structure**

1. No accessory structure ~~may shall~~ project into a front yard.
2. ~~An accessory building may project into a side yard to the extent permitted in the district.~~
Except for window mounted units, no exterior heating or air conditioning structure or equipment ~~may shall~~ be located within 5 feet of any lot line.

F. **Minimum Setbacks for Specific Streets**

~~Minimum Distances to Principal and Accessory Structures for Specific Streets~~

Except as provided in subsections 2-5-2A(2) through 2-5-2A(5), the minimum setback for structures, as measured from the center of the right-of-way, shall supersede minimum setback requirements for any yards abutting the following streets for those districts where such setbacks are lower than those established in the table below.

Street Name	Location	Distance to Structure (min)
Transit Road		135'
Niagara Falls Blvd.	Sheridan Dr. — North	115'
Millersport Highway	Sheridan Dr. — North	115'
Sheridan Dr.		115'
Main St.	East of Village line	115'
Wehrle Dr.	East of Village line	115'
North French Rd.		90'
Maple Rd.		90'
Hopkins Rd.		90'
Evans St.	Sheridan Dr. to Village line	90'
Campbell Blvd.		90'
Sweet Home Rd.	Rensch Rd. — North	90'

Do these distances work for Retrofit Districts?

G. **Yard Encroachments**

The following are permitted in the required yard areas provided they comply with all other standards of this and other applicable ordinances. In no event ~~may shall~~ any of the following encroach into the public right-of-way.

1. **Cornices and Eaves**

Cornices and eaves may project not to exceed 18 inches over any required yard or court.

2. **Sills, Loaders, Belt Courses**

Sills, loaders, belt courses and similar ornamental or structural features may project 6 inches into any required yard or court. An open fire balcony or fire escape or a fire tower may project into a required yard not more than 4 feet.

3. Ground Story Bay Windows, Oriels or Balconies

- a. Ground story bay windows, oriels or balconies, having a combined total width not exceeding one-half of the length of the wall to which they are attached, may project not more than 3 feet into any required rear yard or into any required side yard which is over 6 feet wide.
- b. An open porch not over 1 story high, window wells, and other similar structures as determined by the Zoning Enforcement Officer, may project into any required side yard, provided that it does not come nearer the side lot line than a distance equivalent to one-half the width of the side yard required as a minimum for that lot.
- c. No porch, oriel, bay window, balcony or stairway constructed under the provisions of the preceding paragraph ~~may shall~~ have a width or a greater dimension in excess of twice the distance of its projection.
- d. An open porch or entranceway may project not to exceed 8 feet into a required front yard.
- e. A bay window not over 1 story high may project 4 feet into a required front yard. Such bay windows shall not occupy more than one-half of the wall to which they are attached. Where part of the front wall encloses garage space, such wall space ~~must shall~~ not be used to figure length of the bay windows. An open porch or deck, not exceeding 1 story in height, may project not more than 8 feet into a required rear yard.

4. Chimney, Smokestack, Flue or Elevator

A chimney, smokestack, flue or elevator shaft may project into any yard or court required as a minimum, provided that the horizontal section of the projection does not exceed 12 square feet in any ~~residential residence~~ district or 9 square feet in any other district, provided that it does not come nearer the side lot line than a distance of 3 feet.

5. Exterior Heating or Air-Conditioning Structures in Residential Districts

Except for window-mounted units, no exterior heating or air-conditioning structure or equipment shall be located within 3 feet of any lot line.

6. Radio and Television Antennas

Radio and television antennas and any other communication equipment shall not be located within the area of a lot between the front or exterior side lot line and the nearest line of any building on the lot.

7. Ornamental Gates, Fences and Portals

Ornamental gates, fences and portals may be constructed in any district, but only on private property, and may be located in a required yard. Fences located in a required front yard ~~must shall~~ be ~~constructed~~ in accordance with §7-5-3.

8. Driveways

- a. The parking of vehicles ~~is shall be~~ prohibited in any required front yard except on a paved surface.

- b. Driveways may be located in a required front yard in any district, and are not subject to setbacks required for other vehicle use areas.
- c. In no case ~~may shall~~ a commercial driveway be located less than 10 feet from an adjacent residential lot line.

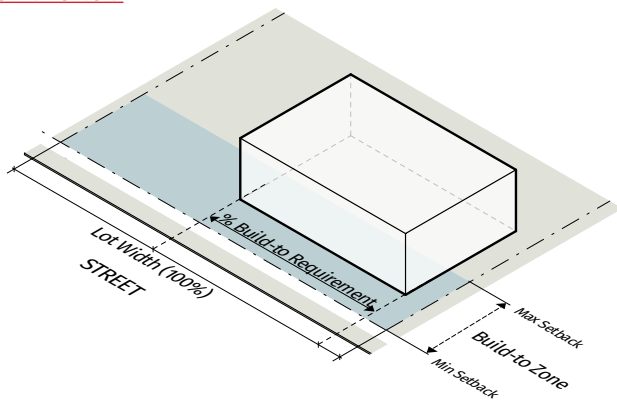
Sec. 3.1.5. **Build-To Zone**

A. **Build-to Zone**

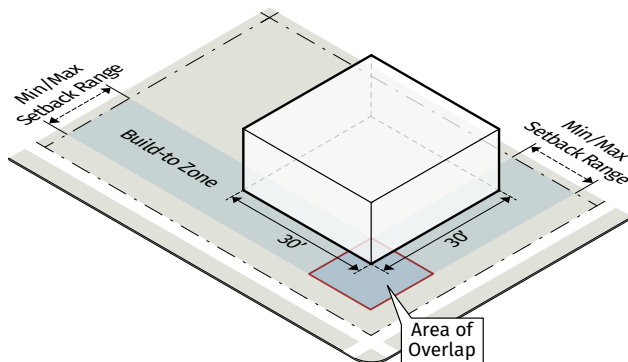
1. The build-to zone is the area on the lot or site where a percentage of the building facade must be located, measured as a minimum and maximum setback range from the primary street or side street lot line.
2. Where the build-to zone lies within an easement that does not allow construction, the Zoning Enforcement Officer may waive the build-to requirement, in whole or in part.

B. **Lot Frontage**

1. The required lot frontage is the amount of the building facade that must be located in the build-to zone, measured based on the width of the building or buildings divided by the width of the lot.



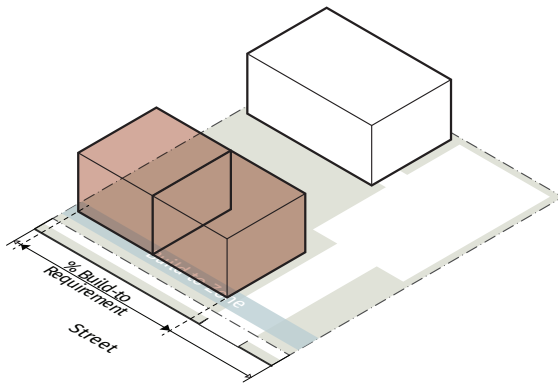
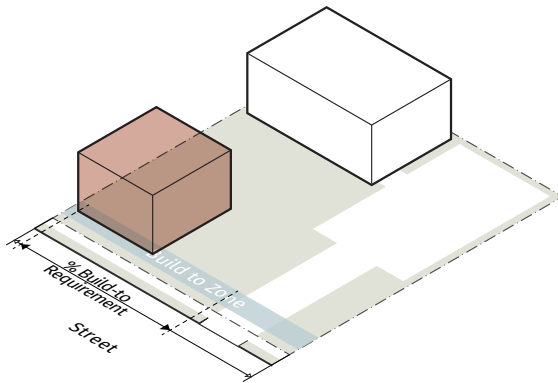
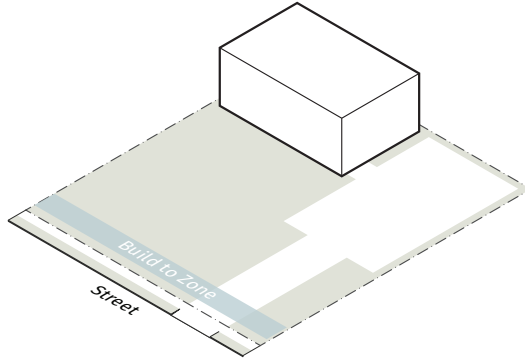
2. For a building facade to count toward the minimum lot frontage requirement, street-adjacent ground floor uses must be 20 feet in depth minimum.
3. The width of a parking entrance into or through a building does not count toward the lot frontage percentage requirement.
4. In no case will access to a site that has no access options be denied due to application of the lot frontage requirement. Where no other access is available, a driveway of the minimum acceptable width for fire safety purposes is allowed, even where it reduces the building width below the required lot frontage percentage.
5. On a corner lot, a building must be placed within or abutting the area where the build-to zones of 2 intersecting streets overlap. The building must extend within the build-to zone for a minimum of 30 feet in both directions.



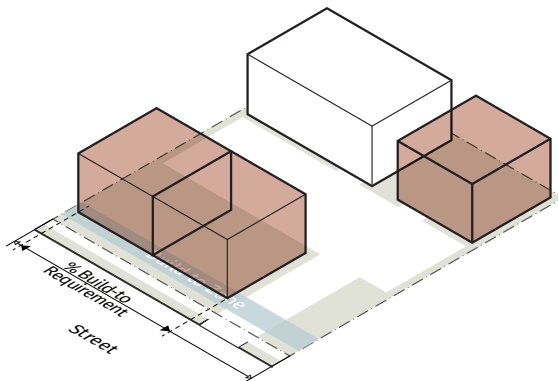
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6. **Lot Frontage: New Buildings**

- a. All new buildings must be placed in the build-to zone until the required lot frontage for the entire lot or site has been met.



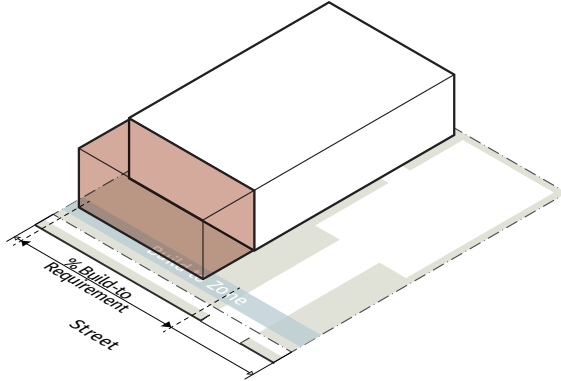
- b. Once the required lot frontage percentage has been met for the entire lot or site, new buildings may be placed outside of the build-to zone.



7. Lot Frontage: Additions

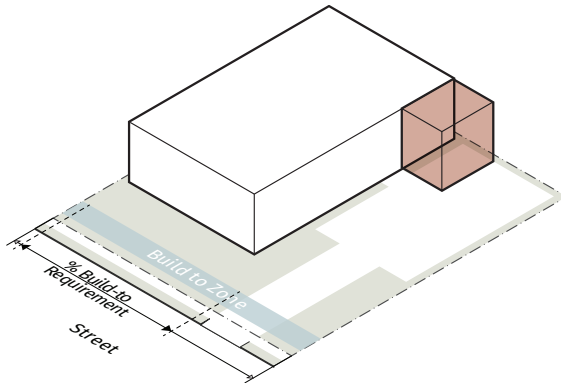
a. Front Additions

Any addition to the front of an existing building must be placed in the build-to zone. The addition does not have to meet the required lot frontage percentage for the entire lot or site.



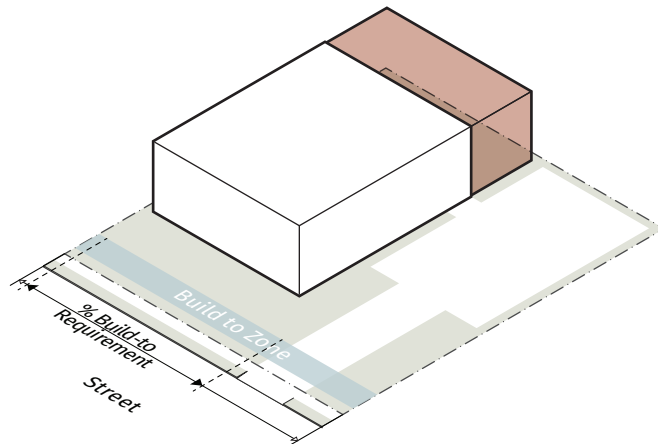
b. Side Additions

Side additions no greater than 20% cumulatively of the existing building footprint are allowed outside of the build-to zone. Once the required lot frontage percentage for the entire lot or site has been met, side additions of any size are allowed.



c. Rear Additions

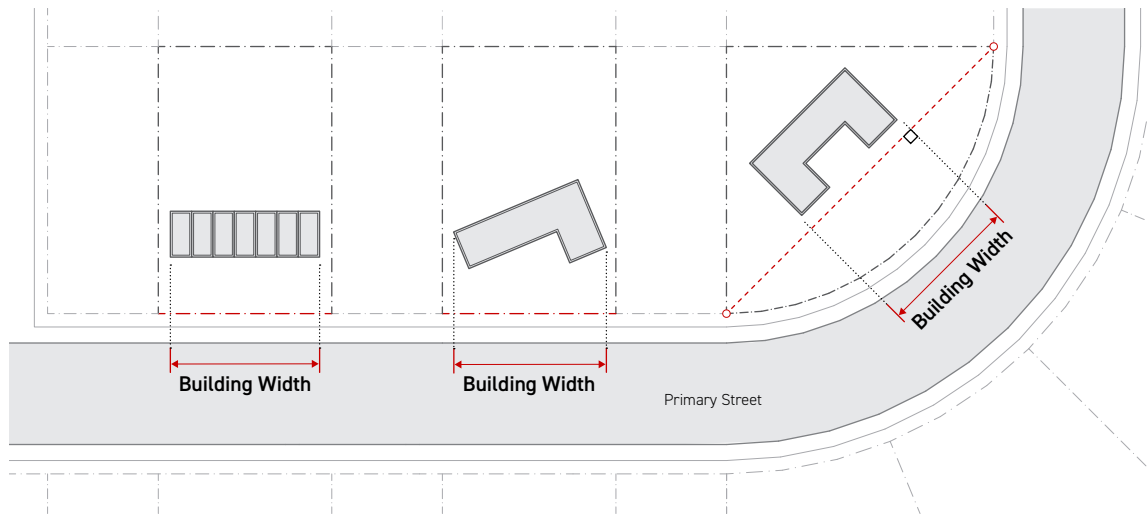
Rear additions are allowed outside of the build-to zone.



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Sec. 3.1.6. **Street-Facing Building Length**

- A. The maximum allowed width of any building on a development site.
- B. Building width is measured horizontally and parallel to each street lot line from one end of a applicable building to the opposite end.

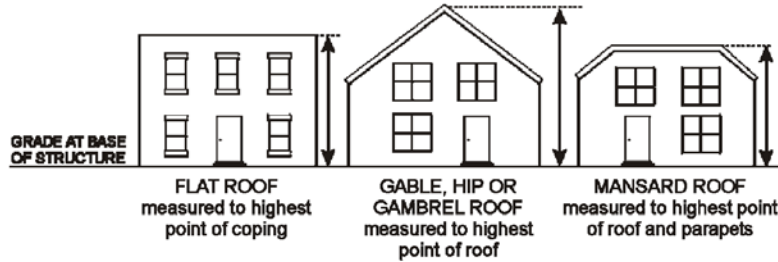


- C. When a Frontage limits building width, no applicable structure or collection of structures may be wider than the maximum width indicated by the Frontage.
- D. In order to establish structures on a proposed development site as separate buildings for the purpose of measuring building width, a building separation equal to at least one-third of the height of the tallest adjacent building is required. This separation does not apply to buildings on adjacent development sites.

Sec. 3.1.7. **Building Height**

A. **Measurement**

Building height is measured as the vertical distance from the finished grade line at the foundation to the highest point of the roof.



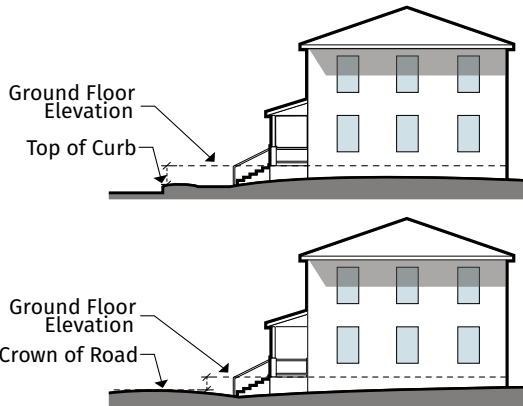
B. **Exceptions**

1. Mechanical space for building equipment placed on the building roof may be allowed above the maximum height specified, provided that such mechanical space is set back a minimum of 15 feet from any exterior wall, does not exceed 15 feet in height, and is adequately screened from view.
2. Chimneys, radio or television antennae, located upon and constituted as an integral part of a principal structure, may be erected above the height limit specified but are limited to a height not exceeding 65 feet above the average finished grade.

C. **Story Height**

1. **Ground Floor Elevation**

- a. Ground floor elevation is measured from the top of the adjacent curb, or from the crown of the road where no curb exists, to the top of the finished ground floor.

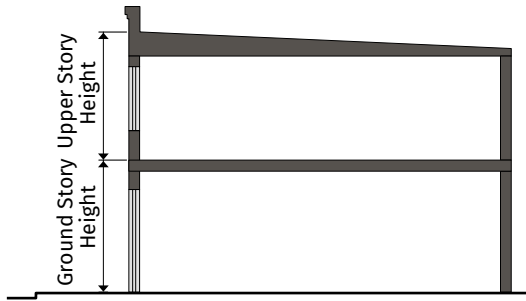


- b. Minimum ground floor elevation applies to the first 30 feet of the lot depth measured from the right-of-way.

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2. **Story Height**

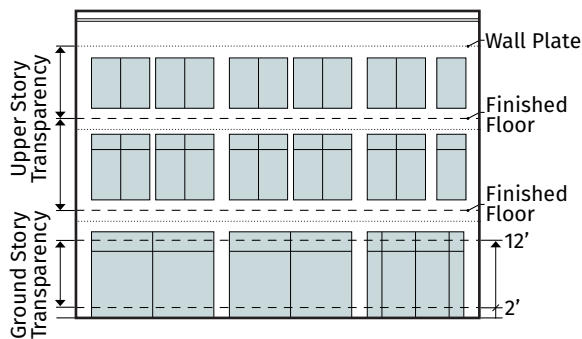
Story height is the height of each story of a building, measured from the top of the finished floor to the top of the finished floor above. When there is no floor above, story height is measured from the top of the finished floor to the top of the wall plate above.



Sec. 3.1.8. **Transparency**

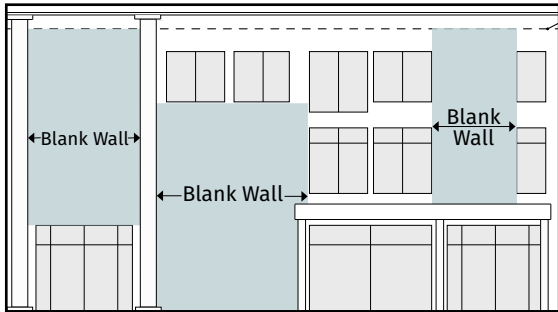
A. **Transparency**

1. Transparency is the minimum percentage of windows and glazed doors that must cover a ground or upper story facade.
2. Transparency applies to primary and side street-facing building facades only.
3. Glass is considered transparent where it has a transparency higher than 80% and external reflectance of less than 15%.
4. Ground story transparency is measured between 2 and 12 feet above the abutting sidewalk.
5. Upper story transparency is measured from the top of the finished floor to the top of the finished floor above. When there is no floor above, upper story transparency is measured from the top of the finished floor to the top of the wall plate above.



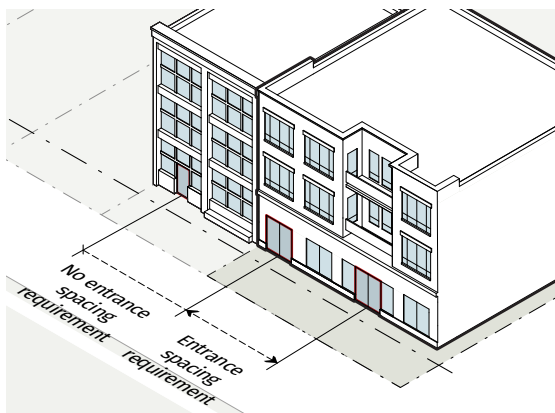
B. Blank Wall Length

1. Blank wall length means a portion of the exterior facade of the building that does not include: windows or doors; columns, pilasters or other articulation greater than 12 inches in depth; or a substantial material change (paint color is not considered a substantial change).
2. Blank wall length applies in both a vertical and horizontal direction.
3. Blank wall length applies to ground and upper story primary and side street-facing facades.



Sec. 3.1.9. **Pedestrian Access**

- A. An entrance providing both ingress and egress, operable to residents at all times and customers during regular business hours, is required to meet the street-facing entrance requirements. Additional entrances off another street, pedestrian area or internal parking area are allowed.
- B. The entrance spacing requirements must be met for each building, but are not applicable to adjacent or abutting buildings. Entrance spacing is measured from the center of one door to the center of the next door.



- C. An angled entrance may be provided at either corner of a building along the street to meet the street-facing entrance requirements.
- D. When a street-facing pedestrian entrance is required, each building on a site in a build-to zone must provide a street facing pedestrian entrance
- E. When a street facing pedestrian entrance is required on a lot where no build-to zone applies, any street facing pedestrian entrance.

Sec. 3.1.10. **Building Separation**

- A. The narrowest allowable distance between two buildings.
- B. Except where a greater requirement has been established under the regulations for the district, buildings within ~~business~~ the nonresidential and Mixed Use Districts ~~must shall~~ be separated by a minimum of 10 feet.

DIV. 3.2. RESIDENTIAL DISTRICTS

Sec. 3.2.1. Lot

A. Principal Structures per Lot

Only 1 principal residential structure is permitted on a lot in the R-R, S-A, RS-1, RS-2, RS-3, RC-3 Districts.

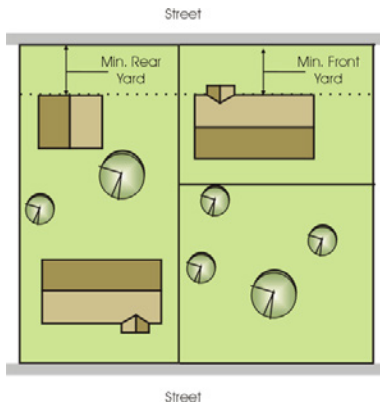
B. Attached Dwelling Units

In the ~~R-4, MFR-4A, MFR-5, MFR-6 and MFR-7~~ RA- and RM- Districts, each attached dwelling unit within a structure which meets the requirements for the district ~~is shall~~ also ~~be~~ deemed to meet the requirements if it is located upon a lot meeting the applicable density or dwelling unit minimum land area requirement. The dwelling unit may include an interest in common lands.

Sec. 3.2.2. Yards

A. Yards on Through Lots

Each through lot ~~shall~~ requires a rear yard setback equal to the required front yard of any abutting lots on the non-frontage street.



B. Driveway Area in Front Yard

For parcels containing 1 to 4 residential dwelling units, the cumulative area of any driveway, plus any impermeable surface area located in the required front yard, ~~must shall~~ not exceed 50% of the area between the front face of the house and the right-of-way line. Driveways and parking areas ~~must shall~~ be constructed of concrete, asphalt or other materials approved by the Commissioner of Building.

C. Front Yards on Partially Built-Up Residential Blocks

Where 50% or more of the aggregate street frontage on one side of a street between 2 successive intersecting streets is occupied by buildings, and the average setback distance of existing residence buildings exceeds the required minimum front yard for the district in which the lot to be developed is located, the minimum front yard of that lot shall be the lesser of:

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1. 85% of the average setback distance of existing residential buildings located on the lots on either side. This minimum required setback ~~must shall~~ not exceed twice the required setback for the zoning district.
2. The minimum front yard required under any restrictive covenants or declarations recorded in the Erie County Clerk's office affecting the lot to be developed and those on either side of it.

D. **Yard and Building Spacing: RA- and RM- Districts**

1. In order to encourage greater flexibility and design and more attractive arrangements of buildings and greater utilization of open spaces, yard regulations for attached dwellings in the RA- and RM- MFR-5, MFR-6 and MFR-7 Districts are ~~hereby~~ established here. Buildings ~~must shall~~ be arranged ~~so as~~ to assure privacy between adjacent structures and intersecting wings of structures, appropriate setbacks from streets, parking and recreation areas and to assure adequate light and air to residents and protection to and from surrounding development. Distances ~~shall~~ vary in relation to the height of structures and the arrangement to other land uses and boundary lines.
2. For the purposes of regulating spacing ~~in the MFR-5, MFR-6 and MFR-7 districts~~, the following definitions apply.
 - a. Ha represents the height of building A.
 - b. Hb represents the height of building B.
 - c. H (Ha or Hb) represents the vertical distance measured from the finished grade to the mean roofline. Building height is defined in **§ 2-5-4**.
 - d. D represents the required minimum horizontal distance between any wall of Building A and the nearest wall of Building B, or between a principal building and a property line as determined by the following calculations.

DESCRIPTION	DISTANCE =	ILLUSTRATION
Building Separation — Parallel Arrangements. Buildings are parallel or within 30 degrees of being parallel and the greater sides of each building face each other across an open yard or court.	$[(H_a + H_b)/2] \times 1.66$	

DESCRIPTION	DISTANCE =	ILLUSTRATION
Buildings are parallel or within 30 degrees of being parallel and the lesser sides of each building face each other across an open yard or court, or the lesser side of one building faces the greater side of the other building.	$[(H_a + H_b)/2] \times 1.5$	
Building Separation – Angular Arrangements. Buildings are at 30 to 60 degree angles from one another. Minimum separation shall be measured at the closest point between the buildings.	$[(H_a+H_b)/2] \times 1.5$	
Building and Lot Line Separation. Buildings with wall of greater length parallel to the lot line.	2H	
Buildings abutting a street right-of-way. In no instance shall the minimum distance be less than 36 feet from the right-of-way-line. Buildings with wall of lesser length parallel to the lot line or the corner of any building on an angle of 30 to 60 degrees to the lot line.	1.5H	
Buildings which, if wall lines are extended, do not intersect the wall of the nearest structure.	1H	

Simplify this ??

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E. Accessory Structure Minimum Yard and Building Spacing

Minimum yard and building spacing for accessory structures in RA- and RM- multifamily-Districts are set forth in the following table.

Accessory Structure	TO PRINCIPAL STRUCTURE		TO RIGHT-OF-WAY		TO ADJACENT PROPERTY	
	Main Wall	End Wall	Public	Private	SF Detached	SF Attached, Multifamily or Nonresidential
Private Garage	15	10	25	10	10	5
Storage Garage/Shed/Other	30*	15*	25	10	10	5
Off-street parking, loading, stacking and driveway; dumpster containers and other refuse containers	15**	10**	20**	5***	10	5
Active Recreation Area	50	30	25	30	75	15

Main wall: Any exterior wall of a building containing the principal window of a living, dining and/or sleeping room or rooms.

End wall: Any exterior wall of a building other than a main wall and containing secondary windows required for ventilation and not intended to provide a direct view.

* Garage may be part of main multifamily building or, if detached, as set forth above.

** Parking, loading and stacking area may abut principal structure if that area does not exceed the minimum established by this ordinance and is designed only for the use of the units within the structure.

*** Parking, loading and stacking area only.

DIV. 3.3. SPECIAL DISTRICTS

Sec. 3.3.1. Nonresidential Districts

A. Drive-Through Facility

[Move to Use Standards?]

A drive-through facility is permitted in accordance with the district use tables, subject to the following standards.

1. All outdoor speakers ~~must shall~~ be located a minimum of 100 feet from the nearest residential district boundary and ~~must shall~~ not be directed toward such neighboring property.
2. If the drive-through facility is located within 250 feet from the nearest residential district boundary, the use of all outdoor speakers ~~is shall be~~ limited to between the hours of 6 a.m. and 10 p.m.

Sec. 3.3.2. Industrial Districts

A. Side Yards for Corner Lots

~~Notwithstanding the dimensional standards of this Section,~~ The following minimum setbacks ~~must shall~~ be observed for all required side yards on corner lots in Industrial Districts.

STREET FUNCTION	TO PARKING, LOADING & STACKING	
	TO BUILDING	
Arterial, Major or Minor	40	10
Collector	35	10
Local	25	10

DIV. 3.4. INFILL DISTRICTS

Sec. 3.4.1. Building Height

A. Building Height

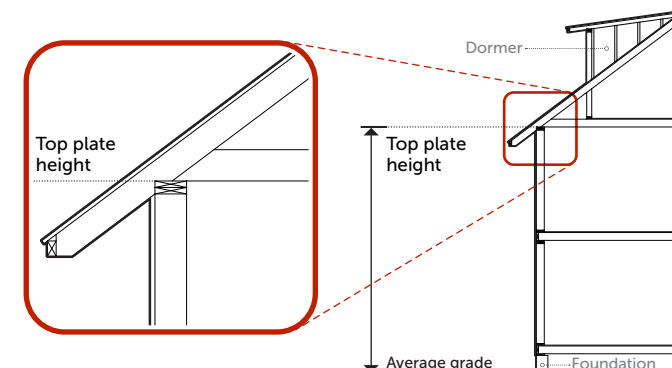
- a. See also Sec. 3.1.4.
- b. A story counts as a half story if dormers are present on no more than 50% of the front or side building length. Where dormers exceed 50% of the front or side building length, it will be considered a full story.



- c. An attic in a pitched roof form does not count as a story when no dormers are present and 50% or more of the attic floor area has a clear height of less than 7.5 feet as measured from the finished floor to the finished ceiling.
- d. Basements and mezzanines, as defined in the Building Code, do not count as a story.

B. Top Plate Height

Top plate height is measured from average grade to the top of the wall plate that bears the roof structure.

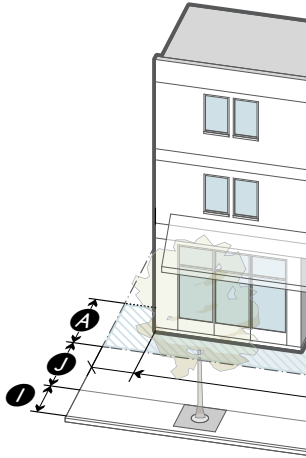


C. Roof Pitch

The pitch of a roof is calculated based on the number of inches it rises vertically for every 12 inches it extends horizontally. For example, a roof that rises 6 inches for every 12 inches of horizontal run has a 6:12 pitch.

Sec. 3.4.2. **Streetscape**A. **Measurement**

1. The curb zone is measured from the back of curb toward the building face.
2. The clear pedestrian zone is measured from the back of the curb zone toward the building face.

B. **Tree Spacing**

Tree spacing is measured as an average to account for driveways, utilities and other potential conflicts.

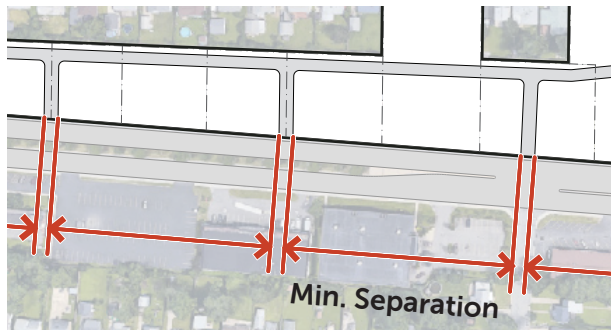
DIV. 3.5. RETROFIT DISTRICTS

Sec. 3.5.1. Shared Access Drive

A shared access drive is a private street, maintained by the property owner, unless dedication to the Town occurs. A private easement is required (see Sec. 6.5.5).

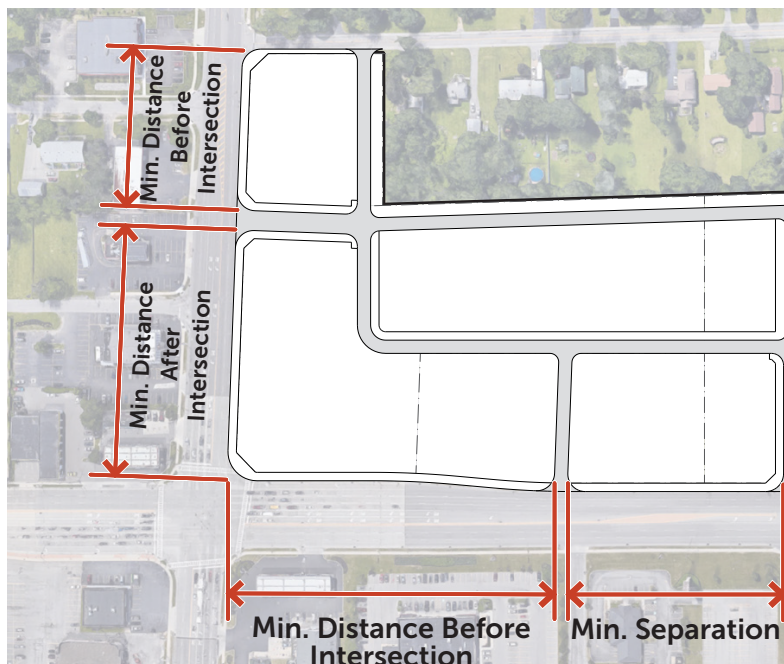
A. Separation

Shared access drive separation is measured between the centerline of any adjacent driveway, or the nearest curb of any intersecting street.



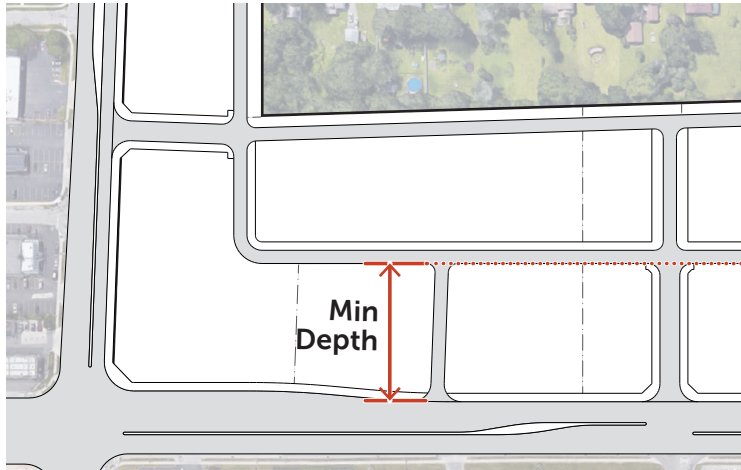
B. Distance Before/After Intersection

The shared access drive distance before or after an intersection is measured from the nearest curb of the intersecting street.



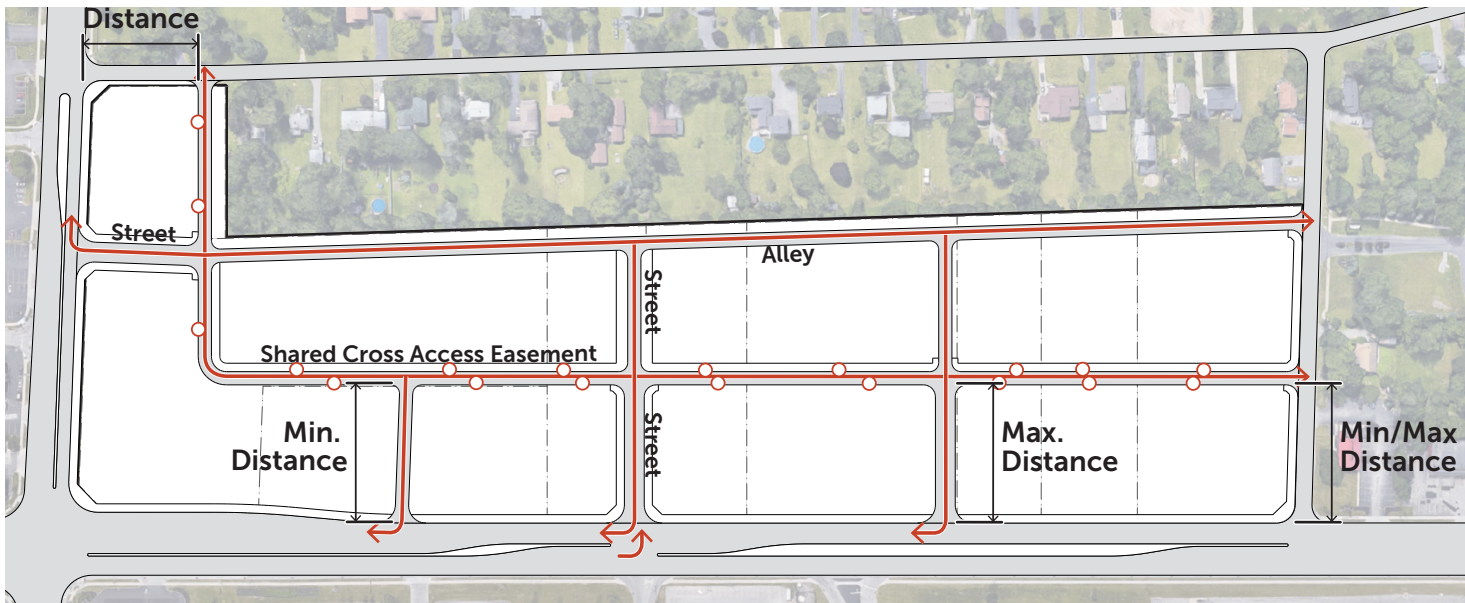
C. **Throat Depth**

The throat depth of a shared access street is measured perpendicular to the street from which access is taken using the outside of the closest drive lane as a starting point.



Sec. 3.5.2. **Cross Access**

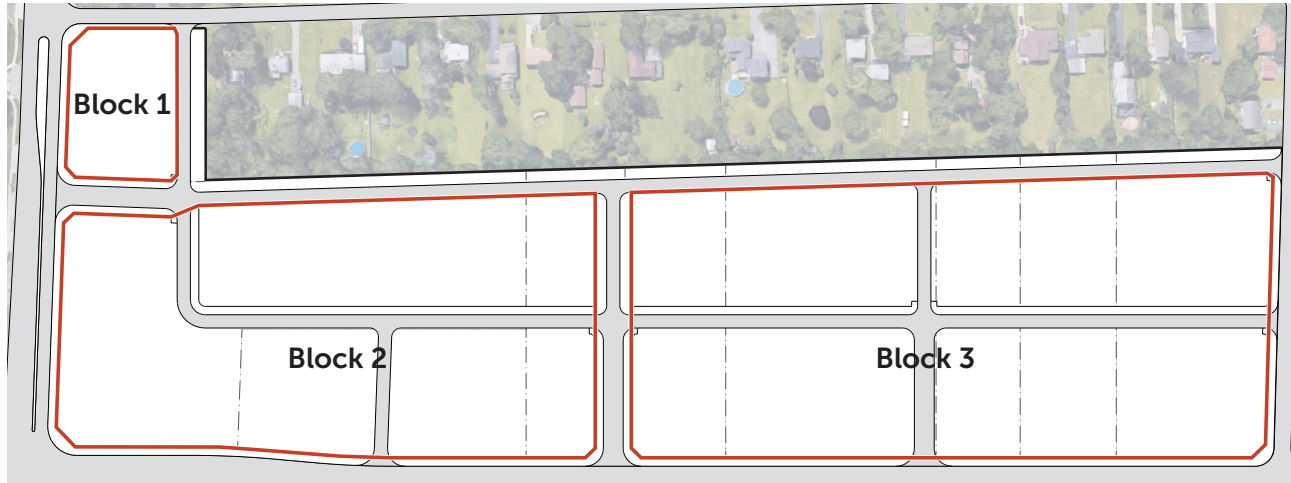
Cross access distance is measured as a minimum and maximum distance from the street lot line that fronts the subject property. A private easement is required for cross access (see Sec. 6.5.5).



Sec. 3.5.3. **Blocks**

A. **Perimeter**

1. A block is bounded by a public or private right-of-way (not including an alley).
2. Block perimeter is measured along the edge of the property adjoining the right-of-way.



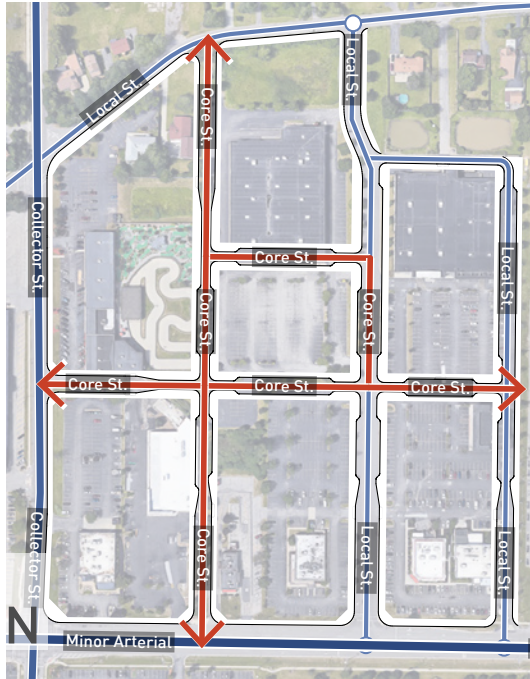
3. The Zoning Enforcement Officer may waive the block perimeter requirements when steep slopes in excess of 25%, freeways, waterways, railroad lines, tree conservation areas, stream buffers, cemeteries, open space or easements would make the provision of a complete block infeasible or does not advance the intent of this Chapter.
4. Where the block pattern is interrupted by public parkland, including greenways, that is open and accessible to the public, pedestrian access points must be provided with a minimum spacing equal to maximum block length.

B. **Length**

Block length is measured along the edge of the public or private right-of-way of each block face.

Sec. 3.5.4. **Core Streets**

The minimum percentage of core streets is based on the linear length of streets, including abutting streets, measured along each street centerline.



Sec. 3.5.5. **Open Space**

The minimum required open space is measured as a percentage of the lot area or the proposed development site. When the development is to occur in phases, each phase of development must provide at least the percentage of open space that would be required for the lot area of the proposed phase.

PART 4.

DESIGN STANDARDS

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Sec. 4.2.2. Retrofit Districts 4-7

DIV. 4.1. RESIDENTIAL

Sec. 4.1.1. Cluster Subdivision Design Types of Residential Development

A. Types

~~Three~~ Two types of cluster subdivisions are permitted within the residential districts, as follows.

1. Cluster Subdivision
2. Rural Cluster Subdivision

B. **Development Review Procedures**

Subdivision review procedures in accordance with the Town of Amherst subdivision regulations ~~shall~~ apply to all cluster developments.

~~A. Conventional Subdivision~~

~~Conventional subdivision is a pattern of residential development that provides the majority of property owners with substantial yards on their own property.~~

C. **Cluster Subdivision**

1. Cluster subdivision trades smaller lot sizes (with smaller yards) for additional common open space. Cluster subdivision ~~must~~ ~~shall~~ provide a minimum of 30% common open space, exclusive of individual lots.
2. In the ~~CR-3A, MHR-8 and MFR~~ RC-3, RM- and R-MH Districts, dwelling units within a group development may be arranged in groups or clusters. Each group or cluster ~~must~~ ~~shall~~ abut a street; however, each dwelling unit within such a group or cluster need not ~~so~~ abut, provided that:
 - a. Each dwelling unit is accessible by means of a private street to service and emergency vehicles.
 - b. The standards of design and construction for private streets meet applicable Town specifications for public streets unless modified by the approved site plan.
 - c. The location, design and construction of all utilities meet all applicable specifications and are adequate to serve the needs of the group or cluster.
 - d. The procedures for the preservation and maintenance of private streets, pedestrian ways and common open space comply with all applicable laws.

D. **Rural Cluster Subdivision**

1. **Definition**

A rural cluster subdivision is a residential development ~~in the R-R District~~ that:

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- a. Helps retain viable agriculture and/or open space;
- b. Minimizes land use conflicts;
- c. Provides for recreational and/or habitat corridors through linked open space networks;
- d. Achieves flexibility, efficiency and cost reduction in the provision of services and infrastructure; and
- e. Does not rely on central sewer facilities.

2. Application Requirements

- a. At the time of application for a rural cluster subdivision, in addition to all subdivision application materials required in accordance with § 4-4-2 of the subdivision regulations, the petitioner shall submit a site analysis map.
- b. The purpose of the site analysis map is to ensure that the important site features have been adequately identified prior to the creation of the site design, and that the proposed open space will meet the requirements of this Section. The site analysis map shall include the following features:
 - i. Property boundaries;
 - ii. All streams, rivers, lakes, wetlands and other hydrologic features;
 - iii. Topographic contours of no less than two-foot intervals unless a more precise vertical scale is available;
 - iv. General vegetation characteristics;
 - v. General soil types and areas suitable for installation of on-site wastewater treatment systems;
 - vi. The planned location of protected open space;
 - vii. Lands with protected development rights;
 - viii. Existing roads and structures; and
 - ix. Potential connections with existing open space and trails.

3. Design Standards

The following standards shall apply to all developed areas within a rural cluster subdivision.

a. Location

The developed area shall be located outside the designated open space area.

b. Development Pattern

Within the developed area, development of residences and infrastructure shall accommodate, to the extent possible, existing natural features, including site topography, water courses, wetlands, tree and vegetation lines and similar natural resources. Lots are not intended to be stripped out along existing rural roadways, but rather clustered in the most appropriate portion of the site for development, and surrounded by open space.

c. Determination of Density

Density in a rural cluster subdivision shall be determined by multiplying the gross area of the tract of land by the maximum gross density for the R-R district (one unit per three acres).

d. Dimensional and Density Standards

Notwithstanding the dimensional standards in § 3-2-2B, a rural cluster subdivision shall comply with the development standards in the following table.

e. Dimensional and Density Standards

RURAL CLUSTER SUBDIVISION	
Subdivision Area	15 acres min
Open Space	50% of gross area min
Gross Density	1 unit/3 acres max
Lot Area	1 acre
Lot Width	150' min
Yards	
Front yard	50' min
Rear yard	50' min
Side yard	25' min
Height	2 stories (up to 35') min
Building Coverage	25% max

4. Permitted and Prohibited Uses in Designated Open Space

- a. Within the rural cluster subdivision open space, the following uses are permitted:
 - i. Natural resource conservation areas;
 - ii. Open uses as permitted in § 3-2-2A;
 - iii. Active or passive common open space;
 - iv. Common water supply systems; and
 - v. Common septic system drain fields.
- b. Any use not listed above is prohibited within the rural cluster subdivision open space.

5. Agricultural Buffer

- a. When the developed area of a rural cluster subdivision is located adjacent to permitted agricultural activities that exist either on an abutting property or within all or part of the required open space area, a medium-impact screening buffer in accordance with § 7-2-4B(2) shall be provided.
- b. The Planning Board or Zoning Enforcement Officer, as applicable, may require a higher impact screening. The final approval authority for the site plan shall consider the following characteristics in making the increased buffer determination:
 - i. The location, type and scale of agricultural activities;
 - ii. The location of the developed area in relation to the agricultural activities;

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- iii. The absence of trees and understory vegetation in the proposed buffer area to provide an opaque screen of agricultural activities on abutting properties;
 - iv. The absence of topographic features in the proposed buffer area to provide an opaque screen of agricultural activities on abutting properties; and
 - v. The presence of other significant structures used for large scale commercial or industrial activities.
- c. In no case shall the required buffer be less than 40 feet in width.

Sec. 4.1.2. **Building Wall Lengths and Offsets**

~~and Location for Attached Dwellings~~

In the ~~MFR-4A, MFR-5, MFR-6 and MFR-7~~ RA- and RM- Districts, any exterior wall of a sequence of units ~~must shall~~ not exceed 132 feet in length without a 90 degree offset of at least 10 feet, and the aggregate length of any wall, including its offsets, ~~must shall~~ not exceed 176 feet.

DIV. 4.2. NONRESIDENTIAL/MIXED USE

Sec. 4.2.1. Business District Design Standards

[FROM EXISTING AMHERST BUSINESS DISTRICT DESIGN STANDARDS]

A. Materials

1. All nonresidential street facades shall be constructed of the following materials:
 - a. Brick;
 - b. Stucco (cementitious finish only, no more than 30 percent of any facade);
 - c. Architectural concrete masonry;
 - d. Hardi-plank or similar cementitious siding;
 - e. Masonry;
 - f. Wood;
 - g. Field stone, ledge stone or other native veneer;
 - h. Metal (for beams, lintels, trim elements and ornaments); or
 - i. Glass (no more than 80 percent of any facade).
2. The following materials are prohibited on all primary facades and mansard roofs:
 - a. Asbestos or corrugated metal products;
 - b. Highly reflective metal siding or panels;
 - c. Plain Concrete Masonry Unit (CMU);
 - d. Bare or painted plywood; and
 - e. T-111 or unfinished lumber grade wood.
3. Any side or rear wall facing a street, residential district or public or semipublic area must consist of the same facing materials as the building front.

B. Building Entrances

1. Nonresidential buildings ~~must shall~~ provide a minimum of one building entrance oriented towards a street, pedestrian walkway or parking area.
2. Nonresidential building entrances on corner lots ~~must shall~~ be either oriented in the same direction as entrances of adjacent buildings or oriented toward the corner of the lot.

C. Display Windows

Interior displays and shelving within 10 feet of the window glass must not exceed 15% of the total window area of street-facing ground floor facades.

D. Covered Pedestrian Walkway on Retail Facades

A covered pedestrian walkway a minimum of 6 feet in width is required along any facade featuring a customer entrance or along any building facade abutting a parking area in accordance with the following.

1. Single Use Retail Building

A single use retail building must provide a covered pedestrian walkway centered on all customer entrances for a distance of not less than 25% of the length of the shortest facade featuring a customer entrance. Where a customer entrance is located at the corner of a building, a covered pedestrian walkway must extend along both facades for a distance of not less than 25% of the length of the shorter facade.

2. Multiple Development

A building within a multiple development must provide a covered pedestrian walkway consisting of either:

- a. An arcade covering 100 percent of the length of the facade; or
- b. An awning covering a minimum of 85 percent of the length of the facade.

3. Arcades

Arcades must be integrated structurally and architecturally into the design of the facade and constructed of consistent facade materials.

4. Awnings

- a. Awnings must be associated with windows and doors and constructed of solid materials.
- b. Awnings must be integrated structurally and architecturally into the design of the facade and complement the overall color scheme of the building facade from which they project.
- c. Awnings may extend a maximum of two feet into the required setback area.
- d. The following awnings are prohibited:
 - i. Mansard awnings (awnings that cover more than 85 percent of a facade or those that connect two facades); and
 - ii. Back-lit awnings.
- e. Fabric awnings must be kept in good repair so that the original color and integrity of the fabric is maintained.

Sec. 4.2.2. Retrofit Districts

A. Open Space

[INSERT standards for quality, improvement of open space]

[Intentionally Blank]

PART 5. USE

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DIV. 5.1. GENERAL

Sec. 5.1.1. Distance Between Uses

Where a provision of this Zoning Ordinance requires the determination of the distance between two uses, the following principles shall be followed:

- A. The measurement to or from a use that is the principal use on a lot shall be measured from the point on a lot line that is nearest to the other lot line from or to which the measurement is being made;
- B. The measurement from or to one of several principal uses on a lot, such as in a shopping center, shall be measured from the point on the boundary of the leasehold or other space occupied by that use that is nearest to the lot line from or to which the measurement is being made; and
- C. The distance shall be measured by the shortest linear distance between the points.

Sec. 5.1.2. Key to Use Tables

A. Permitted

A P in the ~~Permitted~~-column of a district use table indicates that a use is allowed by right in the respective district, ~~subject to the use regulations in Part 6~~. Such uses are subject to all other applicable regulations of this Ordinance.

B. Permitted With Supplemental Use Standards

A P* in the column of a use table indicates that a use is allowed subject to the supplemental use standards (linked in the right-hand column of the table).

C. Special Use

An S in the ~~Special Use~~-column of a ~~district~~-use table indicates that a use is allowed only if reviewed and approved as a special use permit in accordance with Sec. 8.2.5. Special uses are subject to all other applicable regulations of this Ordinance including the additional standards contained in Part 6, except where expressly modified by the Zoning Board of Appeals as part of the special use permit exception approval process.

D. Uses Not Allowed

A blank cell ~~Any unlisted use~~ indicates that the use is not allowed in the particular district.

E. Uses Not Listed

The Zoning Enforcement Officer shall determine whether or not an unlisted use is similar to an existing use or is substantially similar to an already defined specific use, using the criteria in §8-12-4, Determination of Similar Uses.

F. Standards

The "Standards" column on the use table is a cross-reference to any supplemental use standard limited or special use standard regulation-listed in Part 6.

G. Developments with Multiple Principal Uses

Where a proposed development contains a Special Use according to the Use Table, that use requires separate review and approval by the Zoning Board of Appeals. This Special Use review does not extend to other permitted uses in the building or project. A development comprised of uses regulated by separate rows on the Use Table shall be reviewed using the most restrictive process from among the proposed uses.

DIV. 5.2. RESIDENTIAL DISTRICT USE TABLE

Sec. 5.2.1. Residential Districts

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS													Use Standards	
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30	RM-60		
OPEN USES															
Animal husbandry															
Farm	P	P													
Plant nursery															
Stables, public or private	P	P													Sec. 6.1.1
RESIDENTIAL USES															
Single-family detached	P	P	P	P	P	P		P	P	P	P	P			
Manufactured home							P								
Patio/zero lot line home						P*									Sec. 6.2.5
Attached dwelling								P*	P*	P*	P*	P*			??
Multifamily dwelling															
Upper story dwelling															
Assisted group living												P*	P*		Sec. 6.2.2
Adult care facility												P*	P*		Sec. 6.2.2
Common recreation structure or use			P*	P*	P*	P*		P*	P*	P*	P*	P*	P*		Sec. 6.2.2
Dormitory										S	S	S	S		Sec. 6.2.4
Hospice												P	P		
Intermediate care facility												P	P		
Nursing home												P*	P*		Sec. 6.2.2
Residential care center for adults												P	P		
Senior citizen housing												P*	P*		Sec. 6.2.2
PUBLIC AND CIVIC USES															
Airport															
Ambulance Service															
Basketball, baseball or football facility															
Cemetery or mausoleum															
Civic association															
College, university, technical or theological school															
Daycare center, nursery or other private school															
Fraternal organization															
Fraternity or sorority house															

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS													Use Standards	
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30	RM-60		
Government structure or use															
Hospital															
Ice-skating facility															
Indoor recreation facilities															
Library															
Minor Utilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Museum															
Outdoor recreation facilities															
Outdoor ice-skating facility															
Outdoor tennis, racquetball or handball facility															
Park or open space	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Place for public assembly															
Place of Worship	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	§ 6-3-3
Private club															
Public or private school															
Public recreation facility															
Public Utility Service Structure or Facility	S	S	S	S	S	S	S	S	S	S	S	S	S	S	§ 6-3-4
Public Works Construction Yard															
Senior or youth center															
Swimming facility															
Telecommunication Facility	S	S	S	S	S	S	S	S	S	S	S	S	S	S	§ 6-7
Tennis, racquetball or handball facility															
Wildlife reservation or conservation project															
COMMERCIAL USES															
Adult Establishment															
Advertising Agency															
Agricultural products, sale of															
Animal grooming, cat boarding facility, animal hospital or veterinarian															
Antiques and second-hand merchandise store															
Apparel and accessories store															
Apparel repair and alterations and shoe repair shop															
Archival center															

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS													Use Standards
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30	RM-60	
Art studio														
Bakery or confectionary shop (retail)														
Bank														
Beauty or barber shop (retail)														
Bed and breakfast	S	S	S	S	S	S		S	S	S	S	S	S	§ 6-4-2
Book and stationery store														
Building materials sales and service														
Business, driving, martial arts and other trade schools														
Business services, including sign company, window cleaning and other dwelling and building services														
Bus garages														
Car wash														
Cat boarding facility														
Commercial recreation activities, indoor														
Commercial recreation activities, outdoor														
Contracting or construction services														
Department store														
Dog day care facility														
Drug store														
Electrical and household appliance repair service														
Employment agency														
Farm and garden supply store														
Farm equipment sales or service														
Food store														
Funeral home														
Gymnasium or health club														
Ground-mounted solar energy system, Tier I & Tier II		P*												§ 6-10
Ground-mounted solar energy systems, Tier III		S												§ 6-10
Hardware store														
Home furnishing store														
Home garden store														

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS												Use Standards	
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30		RM-60
House and camping trailer sales, camping equipment and accessories and related repair and service														
Household fixture and appliance sales or service														
Ice store														
Indoor commercial recreation facility														
Jewelry store														
Job printing or photography store														
Kennel, commercial														
Laundromat, cleaning and dyeing outlets and pickup														
Laundering, dry-cleaning & dyeing services														
Liquor store														
Medical laboratory testing service														
Motel or hotel														
Motion picture theater or live theater														
Motor vehicles repair														
Motor vehicle washing establishment														
Nurseries for sale of plants, shrubs, and trees														
Office														
Offices for scientific research, telecommunications, telemarketing, administrative support services for business and finance, electronic data operations and development and testing enterprises														
Outdoor storage														
Passenger terminal														
Personal training facility														
Photographic store														
Photography studio														
Printing and photocopying store														
Plumbing store														
Postal store or post office														
Private parking facility														
Production and sale of arts and crafts made on-site														

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

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RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS												Use Standards	
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30		RM-60
Radio or television station														
Recording studio														
Restaurant with drive-through														
Restaurant with outdoor dining														
Restaurant without drive-through or outdoor dining														
Retail Services														
Riding academy														
Service station														
Sexually oriented cabaret or theater, or sexually oriented motion picture theater														
Sexually oriented media store, sex shop														
Shops for custom work for the making of articles to be sold only at retail on the premises														
Sporting goods or bicycle store														
Tattoo parlor / body art studio														
Tire, battery and accessory store														
Trailer and motor vehicle sales and rental														
Training schools, such as technical, trade, vocational or business														
Variety store														
Vehicle parts sales														
Vehicle sales (new), rental, leasing and related repair; used vehicle sales and vehicle rental in conjunction with new vehicle sales only														
Vehicle sales, rental, leasing and related repair, including trailers														
Wholesale store														
INDUSTRIAL USES														
Automobile junkyard														
Blending, mixing and packaging of detergents, disinfectants, fungicides, ink, insecticides, soap and related household and industrial chemical compounds														
Compounding, manufacturing and assembly of:														

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS												Use Standards		
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30		RM-60	
Automobile and boating accessories from previously prepared materials															
Clothing or other textile products															
Electrical and electronic equipment and appliances															
Food and beverage products															
Household items															
Furniture															
Merchandise from previously prepared materials															
Musical, scientific, medical, dental or photographic instruments, equipment or supplies															
Office equipment															
Panels, sheets, tubes or rods															
Pharmaceutical products, cosmetics or toiletries															
Printing, publishing and engraving															
Recreation equipment or toys															
Experimental, research and testing facility															
Ground-mounted solar energy system, Tier II		P*													§ 6-10
Ground-mounted solar energy system, Tier III		S													§ 6-10
Laboratory															
Metalwork, manufacture of concrete, wood and other solid products															
Research development facility															
Research, experimental or developmental laboratory															
Tier I experimental pilot plant operation															
Uses engaged in research and development activities including:															
Assembling testing and calibration of electronic, scientific, medical, optical, biochemical, chemical, metallurgical and pharmaceutical components, devices, systems and equipment															
Audio components, radio and television equipment															

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

DRAFT FOR DISCUSSION

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS													Use Standards	
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30	RM-60		
Communication, navigation control, transmission and reception equipment															
Controls equipment and guidance systems															
Data processing equipment and systems															
Microfilming and record preparation															
Research, experimental and developmental labs															
Scientific and medical instruments															
Warehousing and storage service															
Wholesale distribution facility															
ACCESSORY USES/STRUCTURES															
Uses and structure customarily incidental to a principal use above	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Area for active recreation							P			P	P				
Auxiliary housing unit	P*	P*	P*	P*	P*	P*		P*	P*	P*	P*	P*			Sec. 6.8.2
Cat boarding facility	P*	P*													Sec. 6.8.7
Convenience retail and service facility							P*							P*	Sec. 6.8.4
Detached private garage, parking area	P	P	P	P	P	P		P	P	P	P	P			
Dumpster/refuse container							P*	P*	P*	P*	P*	P*		P*	Sec. 7.2.4.D
Garden, recreation and health care facility														P	
Greenhouse	P	P													
Home occupation Type I or II	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*			Sec. 6.8.6
Kennel, accessory	P*	P*													Sec. 6.8.7
Off-street parking, loading, stacking	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*		P*	Div. 7.1
Park office							P*								Sec. 6.8.8
Private garden	P	P	P	P	P	P	P	P	P	P	P	P			
Private recreational uses/structures	P	P	P	P	P	P		P	P	P	P	P			
Private schools and day-care centers, accredited when required by NYS, when accessory to a place of worship		P	P	P	P	P		P	P	P	P	P			
Produce stand selling only items grown on-site	P														
Raising of livestock for noncommercial purposes		P*													Sec. 6.8.9
Rooming and boarding of not more than 2 persons	P	P													

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

RESIDENTIAL DISTRICTS	RESIDENTIAL DISTRICTS												Use Standards	
	R-R	S-A	RS-1	RS-2	RS-3	RC-3	R-MH	RA-4	RA-4A	RM-12	RM-18	RM-30		RM-60
Rooming and boarding of not more than two persons only when the dwelling is occupied by the actual record owner			P	P	P	P		P	P	P	P	P		
Sign	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*		Div. 7.8
Small wind energy system	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	Sec. 6.8.14
Solar energy system		P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	P*	Div. 6.9
Storage garages and sheds							P*				P			
Swimming pool	P*	P*	P*	P*	P*	P*		P*	P*	P*	P*	P*		Sec. 6.8.12
Tennis court	P*	P*												Sec. 6.8.12

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

DIV. 5.3. MIXED USE DISTRICT USE TABLE

Sec. 5.3.1. Mixed Use Districts

MIXED USE DISTRICTS	TI-2.5	TI-4	SC-3	DC-5	CTR-5	CTR-8	Use Standards
OPEN USE							
Open Use							
RESIDENTIAL USES							
Attached Dwelling	P*	P*	P*	P*	P*	P*	Sec. 6.2.1
Upper-Story Dwelling	P*	P*	P*	P*	P*	P*	Sec. 6.2.6
Multifamily Dwelling					P	P	
Assisted Group Living	P*	P*	P*	P*	P*	P*	Sec. 6.2.2
PUBLIC AND CIVIC USES							
Ambulance Service	P	P	P	P	P	P	
Business College, Commercial School	P	P	P	P	P	P	
College, University					P	P	
Day Care	P*	P*	P*	P*	P*	P*	Sec. 6.3.2
Place of Worship	P*	P*	P*	P*	P*	P*	Sec. 6.3.3
Public Utility Service Structure or Facility	P*	P*	P*	P*	P*	P*	Sec. 6.3.4
School, Elementary/Secondary (Private)	P	P	P	P	P	P	
Telecommunication Facility	S	S	S	S	S	S	Div. 6.7
Utility, Minor	P	P	P	P	P	P	
COMMERCIAL USES							
Animal Care	P*	P*	P*	P*	P*	P*	Secs. 6.4.2, 6.4.13
Drive-Through Facility				P*	P*	P*	Sec. __
Lodging	P	P	P	P	P	P	
Medical	P	P	P	P	P	P	
Office	P	P	P	P	P	P	
Personal Service	P	P	P	P	P	P	
Recreation, Indoor	P	P	P	P	P	P	
Recreation, Outdoor							
Restaurant	P	P	P	P	P	P	
Restaurant with outdoor dining	P*	P*	P*	P*	P*	P*	Sec. 6.4.9
Retail Sales and Service	P	P	P	P	P	P	
Sexually Oriented Business				P*	P*	P*	Div. 6.6
Vehicle Sales and Service							
INDUSTRIAL USES							
Light Industrial							
Heavy Industrial							
ACCESSORY USES							
All uses and structures customarily incidental to a principal use	P	P	P	P	P	P	

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

DIV. 5.4. SPECIAL DISTRICT USE TABLE

Sec. 5.4.1. Special Districts

SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
OPEN USES							
Animal husbandry	P						
Farm	P						
Plant nursery	P						
Stables, public or private	P*						Sec. 6.1.1
RESIDENTIAL USES							
Single-family detached	P						
Manufactured home							
Patio/zero lot line home							
Attached dwelling							
Multifamily dwelling							
Upper story dwelling							
Assisted group living							
Adult care facility							
Common recreation structure or use							
Dormitory							
Hospice							
Intermediate care facility							
Nursing home							
Residential care center for adults							
Senior citizen housing							
PUBLIC AND CIVIC USES							
Airport		P					
Ambulance Service							
Basketball, baseball or football facility		P					
Cemetery or mausoleum		P					
Civic association		P					
College, university, technical or theological school		P					
Daycare center, nursery or other private school		P*			P*	P*	Sec. 6.3.2
Fraternal organization							
Fraternity or sorority house		P					
Government structure or use		P					
Hospital		P					

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
Ice-skating facility		P					
Indoor recreation facilities							
Library		P					
Minor Utilities	P	P		P	P	P	
Museum		P					
Outdoor recreation facilities							
Outdoor ice-skating facility							
Outdoor tennis, racquetball or handball facility							
Park or open space	P						
Place for public assembly		P					
Place of Worship	P	P		P	P	P	Sec. 6.3.3
Private club		P					
Public or private school		P					
Public recreation facility		P					
Public Utility Service Structure or Facility		P		S	S	S	Sec. 6.3.4
Public Works Construction Yard				S	P*	P*	Sec. 6.3.5
Senior or youth center		P					
Swimming facility		P					
Telecommunication Facility	S	S		S	S	S	Div. 6.7
Tennis, racquetball or handball facility		P					
Wildlife reservation or conservation project		P					
COMMERCIAL USES							
Adult Establishment							
Advertising Agency							
Agricultural products, sale of	P						
Animal grooming, cat boarding facility, animal hospital or veterinarian	P*						Sec. 6.4.1
Antiques and second-hand merchandise store							
Apparel and accessories store							
Apparel repair and alterations and shoe repair shop							
Archival center							
Art studio							
Bakery or confectionary shop (retail)							
Bank				P	P	P	
Beauty or barber shop (retail)							
Bed and breakfast	P*						Sec. 6.4.2
Book and stationery store							

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

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SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
Building materials sales and service						P	
Business, driving, martial arts and other trade schools						P	
Business services, including sign company, window cleaning and other dwelling and building services						P	
Bus garages							
Car wash							
Cat boarding facility							
Commercial recreation activities, indoor							
Commercial recreation activities, outdoor							
Contracting or construction services				P*		P*	Sec. 6.4.4
Department store							
Dog day care facility	P*				P*		Sec. 6.4.13
Drug store							
Electrical and household appliance repair service						P	
Employment agency							
Farm and garden supply store							
Farm equipment sales or service							
Food store							
Funeral home							
Gymnasium or health club							
Ground-mounted solar energy system, Tier I & Tier II					P*	P*	Div. 6.9
Ground-mounted solar energy systems, Tier III				S	S		Div. 6.9
Hardware store							
Home furnishing store							
Home garden store							
House and camping trailer sales, camping equipment and accessories and related repair and service							
Household fixture and appliance sales or service							
Ice store							
Indoor commercial recreation facility							
Jewelry store							
Job printing or photography store							
Kennel, commercial	P						
Laundromat, cleaning and dyeing outlets and pickup							
Laundering, dry-cleaning & dyeing services						P	
Liquor store							
Medical laboratory testing service					P	P	

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
Motel or hotel							
Motion picture theater or live theater							
Motor vehicles repair						P	
Motor vehicle washing establishment							
Nurseries for sale of plants, shrubs, and trees							
Office				P	P	P	
Offices for scientific research, telecommunications, telemarketing, administrative support services for business and finance, electronic data operations and development and testing enterprises							
Outdoor storage						P	
Passenger terminal							
Personal training facility							
Photographic store							
Photography studio							
Printing and photocopying store							
Plumbing store							
Postal store or post office							
Private parking facility		P*					Sec. 6.4.8
Production and sale of arts and crafts made on-site							
Radio or television station				P			
Recording studio				P			
Restaurant with drive-through							
Restaurant with outdoor dining							
Restaurant without drive-through or outdoor dining							
Retail Services							
Riding academy	P						
Service station							
Sexually oriented cabaret or theater, or sexually oriented motion picture theater							
Sexually oriented media store, sex shop							
Shops for custom work for the making of articles to be sold only at retail on the premises							
Sporting goods or bicycle store							
Tattoo parlor / body art studio							
Tire, battery and accessory store							
Trailer and motor vehicle sales and rental						P	
Training schools, such as technical, trade, vocational or business				P	P	P	

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

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SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
Variety store							
Vehicle parts sales							
Vehicle sales (new), rental, leasing and related repair; used vehicle sales and vehicle rental in conjunction with new vehicle sales only							
Vehicle sales, rental, leasing and related repair, including trailers							
Wholesale store							
INDUSTRIAL USES							
Automobile junkyard						P	
Blending, mixing and packaging of detergents, disinfectants, fungicides, ink, insecticides, soap and related household and industrial chemical compounds						P	
Compounding, manufacturing and assembly of:							
Automobile and boating accessories from previously prepared materials							
Clothing or other textile products							
Electrical and electronic equipment and appliances							
Food and beverage products							
Household items					P		
Furniture					P	P	
Merchandise from previously prepared materials							
Musical, scientific, medical, dental or photographic instruments, equipment or supplies							
Office equipment							
Panels, sheets, tubes or rods							
Pharmaceutical products, cosmetics or toiletries							
Printing, publishing and engraving							
Recreation equipment or toys							
Experimental, research and testing facility					P	P	
Ground-mounted solar energy system, Tier II					P*	P*	Div. 6.9
Ground-mounted solar energy system, Tier III					S		Div. 6.9
Laboratory						P	
Metalwork, manufacture of concrete, wood and other solid products						P	
Research development facility					P	P	
Research, experimental or developmental laboratory							
Tier I experimental pilot plant operation					P	P	

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
Uses engaged in research and development activities including:							
Assembling testing and calibration of electronic, scientific, medical, optical, biochemical, chemical, metallurgical and pharmaceutical components, devices, systems and equipment							
Audio components, radio and television equipment							
Communication, navigation control, transmission and reception equipment							
Controls equipment and guidance systems							
Data processing equipment and systems							
Microfilming and record preparation							
Research, experimental and developmental labs							
Scientific and medical instruments							
Warehousing and storage service					P	P	
Wholesale distribution facility					P	P	
ACCESSORY USES/STRUCTURES							
Uses and structures customarily incidental to a principal use above	P	P	P	P	P	P	
Auxiliary housing unit	P*						Sec. 6.8.2
Cat boarding facility	P*						Sec. 6.8.7
Commercial Recreation				P*			Sec. 6.8.3
Day care center					P	P	
Detached private garage, parking area	P						
Employee lunchroom				P			
Greenhouse	P						
Home occupation Type I or II	P*						Sec. 6.8.6
Kennel, accessory	P*						Sec. 6.8.7
Landscaping		P*	P*	P*	P*	P*	Div. 7.2
Maintenance facility and air-conditioning, heating and ventilating equipment				P			
Off-street parking, loading, stacking	P*	P*	P*	P*	P*	P*	Div. 7.1
Private garden	P						
Private recreational use/structure	P						
Private schools and day-care centers, accredited when required by NYS, when accessory to a place of worship		P	P				
Produce stand selling only items grown on-site	P						
Production operation accessory to a research or testing operation					P		
Residence for staff		P	P				
Restaurant without drive-through or outdoor dining				P			

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

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SPECIAL DISTRICTS	SPECIAL DISTRICTS						Use Standards
	AG	CF	RC	OB	RD	GI	
Retail sale of products assembled or stored on-site					P		
Retail sales and service (may be manufactured or assembled on-premise)				P*		P*	Sec. 6.8.11
Rooming and boarding of not more than 2 persons	P						
Sign	P*	P*	P*	P*	P*	P*	Div. 7.8
Small wind energy systems	P*	P*	P*	P*	P*	P*	Div. 6.8.14
Solar energy system	P*	P*	P*	P*	P*	P*	Div. 6.9
Storage garage				P			
Swimming pool, tennis court	P*						Div. 6.8.12
Uses engaged primarily in research and development activities, including: Research, experimental and developmental laboratories and facilities; Communication, navigation control, transmission and reception equipment; Controls equipment and guidance systems; Data processing equipment and systems; Audio components, radio and television equipment; Scientific and medical instruments; Microfilming and record preparation; Assembly, testing and calibration of components, devices, systems and equipment, such as but not limited to electronic, scientific, medical, optical, biochemical, chemical, metallurgical and pharmaceutical.				P*			Sec. 6.8.1

P = Permitted P* = Permitted with supplemental use standards S = Special Use (ZBA approval required) [blank] = Not Permitted

DIV. 5.5. OPEN USE STANDARDS

Sec. 5.5.1. Stables, Public or Private

A stable is permitted in accordance with the district use tables in **Part 3 or Part 5**, subject to the following standards.

- A. A maximum of two horses shall be allowed on the first two acres with an additional horse allowed for each additional two acres.
- B. The stable and all exercise tracks shall be located at least 50 feet from any lot line; and
- C. The manure from such stables shall be stored in tightly covered containers, which will control odor and insects.

DIV. 5.6. RESIDENTIAL USE STANDARDS

Sec. 5.6.1. Attached Dwelling

An attached dwelling is permitted in accordance with the district use tables in Part 3, 4 or Part 5, subject to the following standards.

- A. There shall be only one attached dwelling structure per lot.
- B. The attached dwelling shall not exceed four units per structure.

Sec. 5.6.2. Assisted Group Living

An assisted group living facility including elderly or handicapped group living, adult care facility, a nursing home and a senior citizen home is permitted in accordance with district use tables in Part 3 or Part 5, subject to the following standards.

- A. The minimum floor area shall conform to the minimum floor area requirements stated in the affected district. Alternatively, if the sum of the floor areas of all bedrooms, dining areas, recreation rooms, and other common living areas divided by the total number of bedrooms is equal to 400 square feet or more, the facility shall be permitted.
- B. Any applicable requirements of NY Social Services Law, Chapter 55.

Sec. 5.6.3. Common Recreation

A common recreation use or structure is permitted in accordance with the district use tables in Part 3, subject to the following standards.

- A. The land is owned by a homeowners' association or other common ownership and is maintained and used only by the members of the association or the owners in common, their families and guests;
- B. The members of the association or common owners are residents of the subdivision within which the structure or use is located; and
- C. All buildings shall be located at least seventy-five feet from any adjoining residential lot line and all other structures and uses shall be at least 25 feet away.

Sec. 5.6.4. Dormitory

A dormitory is permitted in accordance with the district use tables in Part 3, subject to the following standards.

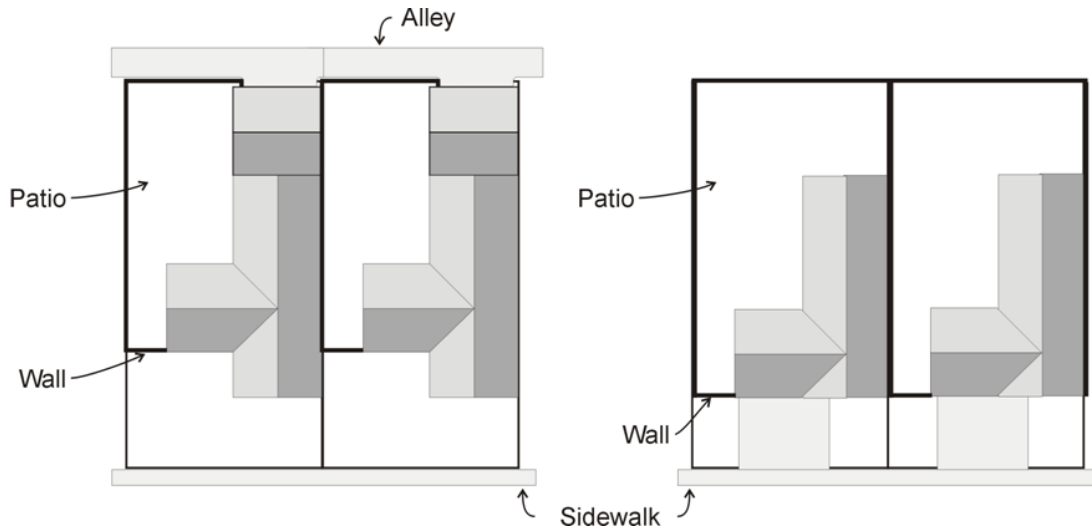
- A. The Zoning Board of Appeals shall consider proximity to campus and residential areas, traffic impact and the availability of public transportation when reviewing a special use permit for a dormitory.
- B. The dormitory shall meet the off-street parking requirements in § 7-1-6. Such requirements shall not be eligible for a variance.

Sec. 5.6.5. **Patio Home**

A patio home is permitted in accordance with the district use tables in **Part 3 or Part 5**, subject to the following standards.

A. **Description**

The patio home is a single-family detached dwelling unit, similar to a zero lot line home, placed on a small lot. Due to the modest area of the lot, the rear yard may be enclosed by a wall, while still preserving a narrow front yard. Where an alley is provided, all garage access shall take place from the alley.



B. **Patio House Dimensional Standards**

1. Notwithstanding the dimensional standards for the district in which a patio home is permitted, a patio home shall comply with the following standards.

Lot area (per dwelling)	5,000 SF min
Lot width	40' min
Front yard	12' min
Garage setback from street ROW	20' min
Rear yard	10' min
Side yard	—
Patio area	1,000 SF min
Patio width	20' min
Building separation	12' min
Height	28' max
Building coverage	40% max

2. A garage with alley access may extend into the rear setback.

Sec. 5.6.6. **Upper-Story Dwelling Unit**

An upper-story dwelling unit is permitted in accordance with the district use tables in **Part 4 or Part 5**, subject to the following standards.

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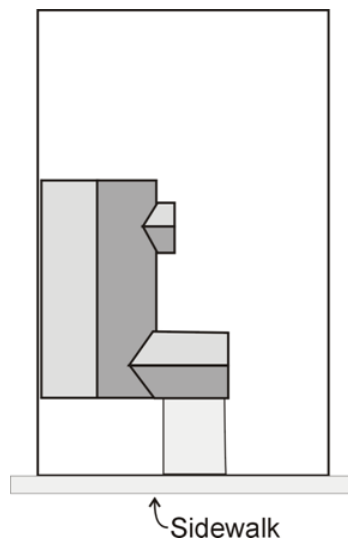
- A. The minimum floor area per dwelling unit shall be as follows: 400 sq ft for a zero bedroom unit; 640 sq ft for a one bedroom unit; 760 sq ft for a two bedroom unit; 1,000 sq ft for a three bedroom unit, and 1,200 sq ft for a four bedroom unit.
- B. Parking may be shared with ground floor uses, where appropriate.

Sec. 5.6.7. Zero Lot Line Home

A zero lot line home is permitted in accordance with the district use tables in [Part 3](#) or [Part 5](#), subject to the following standards.

A. Description

The zero lot line home is a single-family detached dwelling unit positioned on one side lot line without any setback. The home has private yards on three sides of the building, including a wider side yard comprising the equivalent of two side yards for conventional detached housing. Garage access may take place from the front or the rear of the lot.



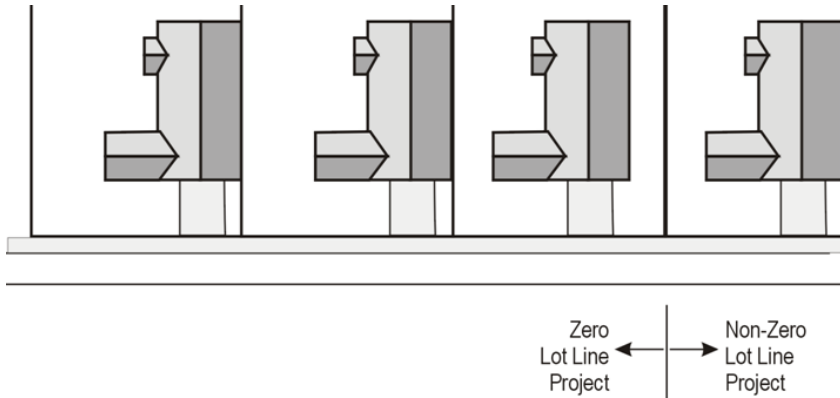
B. Zero Lot Line Dimensional Standards

Notwithstanding the dimensional standards for the district in which a zero lot line home is permitted, a zero lot line home shall comply with the following standards.

Lot area (per dwelling)	5,000 SF min
Lot width	40' min
Front yard	15' min
Garage setback from street ROW	20' min
Rear yard	10' min
Side yard	—
Building separation	12' min
Height	2 stories/35' max
Building coverage	40% max

C. Setbacks

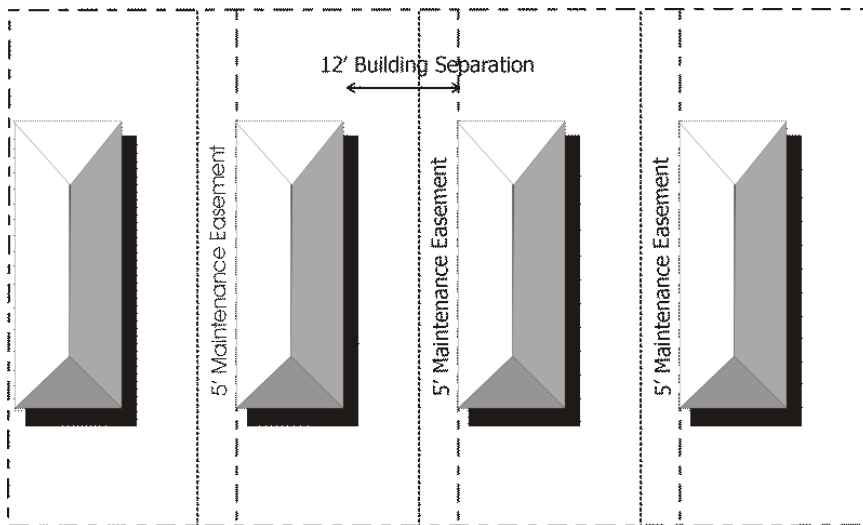
1. The side yard setback may be reduced to zero on one side of the home. This reduction is not permitted on the front or rear yard setback or on the side yard setback adjacent to lots that are not within the zero lot line project.



2. A garage with alley access may extend into the rear setback.

D. Maintenance Easement

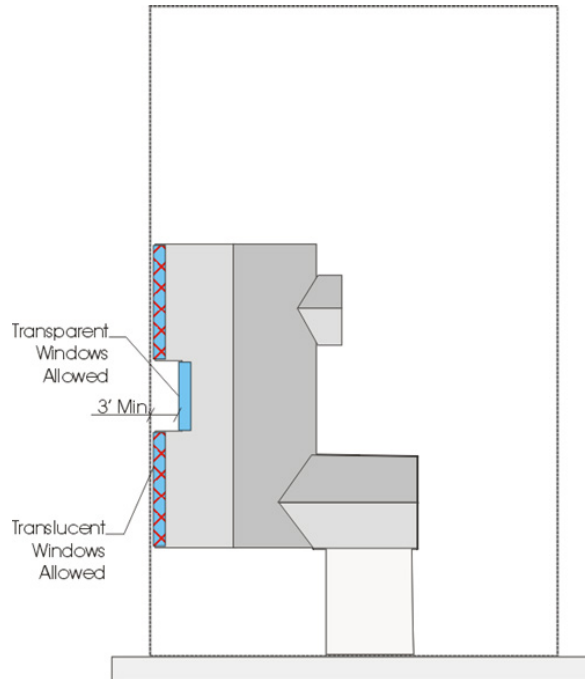
An easement between the two property owners to allow for maintenance or repair of the home shall be required when the roof overhang or side wall of the house are within four feet of the adjacent property line. The easement on the adjacent property shall provide at least 5 feet of unobstructed space. The easement shall be recorded on the deed for the lot where the projection occurs.



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E. Privacy

If the sidewall of the house is on the property line, or within three feet of the property line, windows or other openings that allow for visibility into the side yard of the adjacent lot are not permitted. Windows that do not allow visibility into the side yard of the adjacent lot, such as a clerestory window or a translucent window, are permitted.



Sec. 5.6.8. Fraternity or Sorority House

- A. Permitted only as an accessory use to a college, university, or other educational institution.
- B. Located a minimum of 250 feet from any lot in the R-R, SA, R-1, R-2, R-3, CR3-A, TR-3, R-4, MFR-4A, MFR-5, MFR-6, MFR-7, MHR-8, AG, NCD, PRD, PDD, TND, or TNB Overlay districts.
- C. Maintained for persons enrolled in a college, university, or other educational institution and located entirely on the campus of that institution.
- D. Operated by a nationally chartered membership organization or a locally chartered organization recognized by the educational institution on which it is located.
- E. On-site management and security is provided 24 hours/day.
- F. A minimum 1.25 spaces of off-street parking for each bed is required.

DIV. 5.7. PUBLIC/CIVIC USE STANDARDS

Sec. 5.7.1. Cemetery or Mausoleum

A cemetery or mausoleum is permitted in accordance with the district use tables in **Part 5**, subject to the following standards.

- A. A cemetery shall be a minimum of 50 feet from any residential district. A mausoleum shall be a minimum of 100 feet from any residential district.
- B. Any cemetery shall contain a single continuous area of 20 acres or more.

Sec. 5.7.2. Day Care

A day care is permitted in accordance with the district use tables in **Part 3, Part 4, or Part 5** subject to NY Social Services Law, Chapter 55, Article 6, Children.

Sec. 5.7.3. Place of Worship

A place of worship is permitted in accordance with the district use tables in **Part 3, Part 4 or Part 5**, subject to the following standards.

- A. The minimum lot area shall be one acre and the minimum lot width shall be 200 feet.
- B. The minimum yards for structures, parking, loading and stacking areas shall be in accordance with the following table.

YARD	STRUCTURE HEIGHT UP TO 30'	STRUCTURE HEIGHT 30' OR MORE	PARKING, LOADING & STACKING AREA
Front, from dedicated street ROW	50' min		15' min
Side, abutting a residential district	25' min	Add 1 additional foot of setback on all sides for every foot of height over 30 feet	10' min
Rear, abutting a residential district	50' min		10' min
Side and rear, abutting a nonresidential district	15' min		5' min

- C. Maximum building coverage shall be 25 percent.
- D. Maximum structure height shall be 65 feet.
- E. Schools and day-care centers are permitted as an accessory use.

Sec. 5.7.4. Public Utility Service Structure or Facility

A public utility service structure or facility is permitted in accordance with the district use tables in **Part 3, Part 4 or Part 5** subject to the following:

- A. The facility shall be secured.
- B. The facility shall not be used for storage of vehicles or fuels for vehicles.
- C. The site plan for the proposed structure shall be reviewed by the Zoning Enforcement Officer before a hearing is held by the ZBA. The Zoning Enforcement Officer shall submit a written report to the ZBA

containing its analysis of the proposal under the standards set forth in § 8-6-6. Site plan submittal and review under § 8-7 shall not be required.

Sec. 5.7.5. **Public Works Construction Yard**

A public works construction yard is permitted in accordance with the district "Permitted Use and Structures" tables in Part 4, subject to the following standards.

- A. Such yard shall be permitted on a temporary basis by the Zoning Enforcement Officer for a period not to exceed the terms of the public works construction contract and restoration period or one year, whichever is less. The applicant shall submit an operation plan for the location and extent of activities to occur on the site, and a site restoration plan. The operation plan shall include any proposed changes to the drainage system. A public works construction yard may continue to be operated for a period exceeding one year upon approval of a Temporary Use Permit by the ZBA. If approved, the Temporary Use Permit shall stipulate the duration of the permit and all restrictions or conditions deemed appropriate by the ZBA.
- B. The yard shall be maintained in such a manner that it is neither obnoxious nor offensive by reason of emission of odor, dust, smoke, gas, noise, vibration, electromagnetic disturbance, radiation or other nuisance situation as determined by the Zoning Enforcement Officer.
- C. All noise-making activities that are audible at the property line of the public works construction yard shall be limited to the house stipulated in Chapter 138, Noise, of the Town of Amherst Code. Additionally, in the OB, NB, GB, MS, SC, RD, and ST districts, the hours of operation shall be limited to Monday through Friday from 7 A.M. to 7 P.M.
- D. A public works construction yard shall not be located within 250 feet of a residential zoning district, a property containing a day-care center or any other occupied building.
- E. When a public works construction yard is located within 500 feet of a residential property, fencing of the entire perimeter of the public works construction yard shall be required. The fencing shall be substantially opaque with a minimum height of seven feet a maximum height of ten feet. The point of access to the yard shall be provided with a gate that is secured when the yard is not in use.
- F. Only one point of access to the public works construction yard shall be permitted. Such access shall be provided directly to a public right-of-way.
- G. The storage or stockpiling of materials and supplies within the construction yard shall be limited to a maximum height of 20 feet.
- H. The maximum area of a public works construction yard shall be one acre.
- I. The operation for any on-site crushing of stone, concrete or similar processing shall not be conducted within 500 feet of a residential zoning district listed in Part 3 of this Zoning Ordinance. The hours of operation for any on-site crushing of stone, concrete or similar processing shall be limited to Monday through Friday from 8 A.M. to 5 P.M. Additionally, such activity shall not be conducted on any day that is a national (United States) holiday.
- J. Any lighting placed on the site shall be oriented so as to direct glare or excessive illumination away from the public right-of-way and adjoining properties.

- K. Unless otherwise approved by this ordinance, no signage shall be permitted on the site.
- L. The yard shall be maintained in good condition during the time of its use. Material and construction residue and debris shall not be permitted to accumulate. Grass shall be regularly mowed and weed growth controlled.
- M. In the event that the conditions of this section are not adhered to, the Zoning Enforcement Officer may issue a stop work order.
- N. Upon completion of construction, all materials, supplies, equipment and debris associated with the yard's activities shall be completely removed and the area restored to its original vegetative and topographic state as stipulated in the site reclamation plan within 90 days.
- O. The fee for the operation of a public works construction yard shall be one-hundred dollars (\$100) for each year, or portion thereof, of operation. This fee shall be in addition to any fee required for the application of a Temporary Use Permit from the ZBA.

Sec. 5.7.6. **Archery and Shooting Club, Outdoor**

Upon approval of a special use permit by the Zoning Board of Appeals, an archery and shooting club is permitted in accordance with the district use tables in **Part 5**, subject to the following standards.

- A. The minimum site area shall be 15 acres.
- B. The facility owner shall provide to the Town a hold-harmless agreement signed by all owners of the facility and to remain valid throughout the existence of the club.
- C. The minimum distance from any firing point measured in the direction of fire to the nearest property line shall be a minimum of 500 feet and a minimum of 3,000 feet from any occupied structure.
- D. Hours of operation shall be limited to 8:00 a.m. to 9:00 p.m.
- E. The facility shall be monitored at all times by an attendant, and no unsupervised clients shall be permitted in any of the shooting areas.
- F. All facilities to be designed and constructed in accordance with nationally recognized guidelines for such facilities, such as the National Rifle Association's The Range Manual: A Guide to Planning and Construction.
- G. All construction of such facilities shall comply with all codes including the Town fire code and building code.
- H. The entire perimeter of all hunting and shooting clubs shall be fenced and signed to reduce the potential for trespassing into firing zones. Warning signs identifying the range shall be posted around the perimeter of the parcel on which the shooting range is located at minimum intervals of 75 feet.
- I. No sales or consumption of alcoholic beverages shall be permitted on the property.

Sec. 5.7.7. **Outdoor Recreation Facility**

An outdoor recreation facility is permitted in accordance with the district use tables in **Part 5**, provided that the facility is not within 50 feet from an abutting residential district or use.

DIV. 5.8. COMMERCIAL USE STANDARDS

Sec. 5.8.1. **Animal Grooming, Cat Boarding Facility, Animal Hospital or Veterinarian**

An animal grooming facility, cat boarding facility, animal hospital or veterinarian is permitted in accordance with the district use tables in **Part 4 or Part 5**, provided that all activity associated with the operation shall take place within a completely enclosed building.

Sec. 5.8.2. **Bed and Breakfast**

A bed and breakfast establishment is permitted subject to the approval of a special use permit by the ZBA and in accordance with the following standards:

- A. A bed and breakfast shall only be established in a single-family detached dwelling.
- B. A maximum of four guestrooms and a maximum of 10 overnight guests at any time shall be permitted in any one bed and breakfast establishment.
- C. No food preparation, except beverages, is allowed within individual guestrooms. Meal service may only be provided to overnight guests.
- D. All parking areas on property (except driveways) shall be behind the required building setback line and shall be screened from the view of adjacent residences to a height of six feet by a solid screening fence, or dense shrubs and vegetation.
- E. The bed and breakfast shall be located adjacent to and take access from a collector or arterial street only, as defined by the Town and this ordinance.
- F. The operator of the bed and breakfast shall be a full-time resident of the dwelling in which the bed and breakfast establishment is housed.
- G. No exterior evidence of the bed and breakfast establishment shall be allowed, except for parking and one attached sign no larger than eight square feet. No additional advertising of any kind is allowed on site. The Zoning Board of Appeals shall have discretion regarding the location of the attached sign.
- H. Guests for events or similar functions shall be limited to a total of 15 (including overnight guests).
- I. The Zoning Board of Appeals shall have the authority to impose additional reasonable conditions and restrictions as are directly related to and incidental to the proposed bed and breakfast establishment.

Sec. 5.8.3. **Car Wash**

A car wash is permitted in accordance with the district use tables in **Part 4** however, unenclosed overnight parking of motor vehicles at a car wash is prohibited.

Sec. 5.8.4. **Contracting or Construction Services**

Contracting or construction services are permitted in accordance with the district use tables in **Part 4 or Part 5**, provided that there shall be no storage of the contractor's materials or equipment.

Sec. 5.8.5. **Farm Equipment Sales or Service and House and Camping Trailer Sales**

Farm equipment sales or service or house and camping trailer sales, when permitted in a TNB Overlay District, shall comply with the following standards:

- A. No vehicle storage, display or parking shall be permitted between the principal structure and front lot line.
- B. No service bay or garage doors shall face the street.
- C. Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.

Sec. 5.8.6. **Laundromat, Cleaning and Dyeing Outlets and Pickup Stations**

A laundromat, cleaning and dyeing outlet or pickup station is permitted in accordance with the district use tables in [Part 4](#) or [Part 5](#) provided that such use shall have a gross floor area that does not exceed 5,000 square feet.

Sec. 5.8.7. **Media Store with Some Sexually Oriented Media**

A retail book, video or other media store that has sexually explicit media that constitutes more than ten percent but no more than 30 percent of its inventory or that occupies more than ten percent but no more than 30 percent of its gross public floor area shall be permitted and shall not be subject to the standards for a sexually oriented media store provided that:

- A. The sexually explicit media is kept in a separate room from the rest of the inventory of the store;
- B. Access to the separate room is available only to persons 18 years or older;
- C. Access to the room is through a solid door, accessed by an electronic control device monitored by the clerk or manager on duty through direct visual control; and
- D. Customers and activities in the room are visible at all times to management or the clerk on duty through a video system located at the clerk's or manager's counter.

Sec. 5.8.8. **Private Parking Facility**

A private parking facility is permitted in accordance with the district use tables in [Part 5](#) subject to the following standards.

- A. The parcel served by such facilities shall be located within 250 feet of the nearest point of the parking facilities. For developments greater than 60,000 square feet, the parking facilities shall be located within 500 feet.
- B. When the private parking facilities are being used to meet the minimum required parking requirements for a building, the use of the private parking facilities shall be provided at all times that the building is in use.

Sec. 5.8.9. **Restaurant With Outdoor Dining**

A restaurant with outdoor dining is permitted in accordance with the district use tables in **Part 4 or Part 5**, subject to the following standards.

- A. A minimum of five feet of clear walkway along the curb and leading to the entrance of the establishment shall be free of tables and other impediments.
- B. Adequate trash receptacles shall be provided in the outdoor dining area.
- C. Where 24 or less seats are located in the outdoor dining area, such seats need not be included in calculating the minimum parking requirement for the restaurant.
- D. Outdoor dining shall be permitted between the hours of:
- E. 6 AM and 10 PM, Sunday through Thursday.
- F. 6 AM and 11 PM, Friday and Saturday.
- G. Patrons shall be permitted to remain outdoors to complete meals and beverages served before the latest hours indicated above. Outdoor dining shall be prohibited at any other time.
- H. Outdoor dining may be permitted after the hours listed in **§ 6-4-9D**, provided a special use permit is granted in accordance with **§ 8-6**.

Sec. 5.8.10. **Service Station**

A service station is permitted in accordance with the district use tables in **Part 4 or Part 5**, subject to the following standards.

A. **All Permitted Districts**

Unenclosed parking of motor vehicles at service stations shall be limited to four vehicles, and no vehicle shall remain so parked in excess of 24 hours. Unenclosed overnight parking of motor vehicles at motor vehicle washing establishments is prohibited.

B. **MS and SC District**

1. Fuel pumps and pump islands may be located in a required side or rear yard but shall not be located in any required yard abutting a residential district.
2. All fuel pumps and pump islands shall be at least 10 feet from any building.
3. All fuel pumps, pump islands and canopies shall be at least 20 feet from any lot line.

TND District.

No more than eight pumps shall be permitted.

If more than four pumps are proposed, the pumps shall be split and located on either side of the building.

No signs shall be located on any canopy over the pumps.

All canopy lighting shall meet the requirements of § 7-3.

TNB Overlay District.

The design of any fuel canopy structure shall relate in form, materials, color and architectural style to the principal structure on the premises.

The design of the fuel canopy shall employ a non-illuminated fascia. Signage shall be of similar style, color and materials as signage on the principal structure.

The design of the fuel island canopy shall include fully recessed lighting arranged and shielded so that the sources or lenses of such illumination are not visible from any street or adjoining property. The lighting levels shall comply with the requirements of § 7-3-4.

Sec. 5.8.11. **Vehicle Parts Sales**

A vehicles parts sales establishment is permitted in accordance with the district use tables in **Part 4**, subject to the following standards.

- A. Vehicles shall be serviced only with parts bought on-site.
- B. Space for servicing vehicles shall be limited to 15 percent of the retail space floor area and shall not exceed 15,000 square feet.

Sec. 5.8.12. **Vehicle Sales, Rental, Leasing and Related Repair**

A. **All Permitted Districts**

A vehicles sales, rental or leasing establishment is permitted in accordance with the district use tables in **Part 4**, subject to the following standards.

1. All vehicle storage shall occur on paved surfaces except for vehicle storage located behind the rear line of any principal building, which may occur on any surface approved by the Zoning Enforcement Officer.
2. No outdoor speakers shall be permitted.
3. Wheel stops or other permanent barriers shall be installed to prevent vehicles from encroaching on required setbacks or landscaping.
4. Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.
5. In the MS district, such uses shall require a minimum lot area of one-half acre.
6. In the GB district, used car sales and car rental shall be in conjunction with new car sales only and shall be limited to less than 50 percent of total automobile inventory on the same lot as the new car sale usage.
7. In a GB district that abuts a residential district, car sales and service establishments must meet the following standards:
 - a. Hours of operation are limited from 7:00 a.m. to 9:00 p.m.
 - b. Overhead doors shall not face a residential district and doors will be closed except for entry and exit of vehicles.
 - c. The minimum setback to paved areas shall be 25 feet.

TNB Overlay District

No vehicle storage, display or parking shall be permitted between the principal structure and front lot line.

No service bay or garage doors shall face the street.

Display vehicles shall be arranged in an orderly fashion and provide reasonable room for pedestrian and vehicular maneuvering.

Sec. 5.8.13. Dog Day Care Facilities

A facility for the day care and socialization of dogs is permitted in accordance with the district use tables in Part 4 or Part 5 subject to the following standards.

- A. Dogs may be groomed, trained, exercised and socialized, but not boarded overnight, bred or sold.
- B. All activities related to the dog day care facility shall be undertaken indoors with the exception of short-term outdoor periods for the dogs to relieve themselves. Outdoor areas shall be located a minimum of 250 feet from the nearest residential district boundary and shall be screened by solid wood, vinyl or masonry fencing that is eight (8) feet high.
- C. Dog day care facilities may include as an accessory use the retail sale of products related to the operation of the facility.
- D. The operator of the facility will be required to maintain all required licenses and permits.
- E. All animal waste must be placed in closed waste disposal containers and collected and disposed of by a qualified waste disposal company at least weekly.
- F. A building for a dog day care facility shall be soundproofed to maintain a noise level that is less than 35 dBA as measured at the property line or common wall if within a multi-tenant building.
- G. The hours of operation of a dog day care facility shall begin no earlier than 6:00 AM and shall end no later than 9:00 pm.

DIV. 5.9. **INDUSTRIAL USE STANDARDS**

Sec. 5.9.1. **Research and Development Uses**

Research and development uses listed in the district tables in Part 4 shall be permitted provided that no such use shall occupy more than 15 percent of the gross floor area of the occupant space within which it is located and no such use shall exceed 25,000 square feet of the gross floor area of the building.

DIV. 5.10. SEXUALLY ORIENTED BUSINESSES

Sec. 5.10.1. Purpose

- A. Concurrently with a major revision to this Zoning Ordinance, the Town of Amherst retained Eric Damian Kelly, Ph.D., FAICP, and Connie B. Cooper, FAICP, working under Duncan Associates, to study the issues related to sexually oriented businesses in the Town and in the surrounding region. In a report entitled "Findings and Recommendations, Sexually Oriented Entertainment and Related Businesses," dated August 2005, Kelly and Cooper summarized studies from other communities, including several in New York State, documenting the negative secondary effects that sexually oriented businesses may have on property values and the negative effects that such businesses may have on the community through increases in crime around them. As part of their work, Cooper and Kelly provided to the Town copies of major studies from other communities, which have also been made available to the Town Board. Based on Kelly and Cooper's report and on these other studies, the Town Board has made specific findings regarding such secondary effects and has concluded that the regulations contained in this Article provide an appropriate and narrowly tailored approach to limiting the negative secondary effects of such businesses while allowing the types of communication protected by the First Amendment to occur in Amherst, limited only by appropriate regulations on the place and context of such communications.
- B. The Constitution and laws of the State of New York grant to the Town of Amherst powers, especially police power, to enact reasonable legislation and measures to regulate and supervise sexually oriented entertainment establishments in order to protect the public health, safety and welfare.
- C. It is not the intent of the Town of Amherst in enacting this Ordinance to deny to any person rights to speech protected by the United States and/or State Constitutions, nor is it the intent of the Town of Amherst to impose any additional limitations or restrictions on the contents of any communicative materials, including sexually oriented films, video tapes, books and/or other materials. Further, by enacting this Ordinance, the Town of Amherst does not intend to deny or restrict the rights of any adult to obtain and/or view any sexually oriented materials protected by the United States and/or State Constitutions, nor does it intend to restrict or deny any constitutionally protected rights that distributors or exhibitors of such sexually oriented materials may have.

Sec. 5.10.2. Restrictions Affecting Sexually Oriented Uses

- A. Sexually oriented media stores, sex shops, and other sexually oriented businesses to which this section may be applicable by cross-reference, shall be permitted uses in the zoning districts in which they are listed as such only if they also comply with the following locational standards:
1. No more than one of the uses governed by these provisions shall be permitted on any single lot in the Town of Amherst.
 2. None of the uses regulated under this Section shall be allowed within 500 feet of any lot or parcel in the Town and located within any of the following zoning districts: R-R, S-A, R-1, R-2, R-3, CR-3A, TR-3, R-4, MFR-4A, MFR-5, MFR-6, MFR-7, or MHR-8;

3. Within 1,000 feet of the property line of a public or private school, religious institution, day-care center, public park or playground, or public library;
 4. Within 1,000 feet of another sexually oriented business. Sexually oriented businesses permitted under this Zoning Ordinance shall, with the exception of their permitted signs, landscaping, and off-street parking, be conducted in an enclosed building.
- B. Sexually oriented cabarets, sexually oriented theaters, and sexually oriented motion picture theaters shall be subject to the following standards:

1. Presentation Area

The room or area in the establishment in which performances or presentations will take place shall have a minimum area of at least 500 square feet, all parts of which shall be open and visible to a person at least five feet in height standing anywhere in the room. There shall be no partitions, half-walls, screens, curtains or other dividers dividing portions of the room that are accessible to the public from other parts of the room that are accessible to the public; and

2. Private Rooms

There shall be no private rooms or booths that are accessible to the public, except required restrooms. This shall not prohibit the construction of offices, dressing rooms, kitchens, storage areas and other non-public spaces, provided that they are clearly posted "employees only" or "public access not allowed."

- C. A person who knowingly owns, manages, operates, conducts or maintains any of the uses governed by these provisions in any way which is contrary to these regulations shall be subject to prosecution under § 8-16 of this Ordinance.

Sec. 5.10.3. Registration

- A. No person, firm, corporation or other entity shall lease, rent, maintain, operate, use or allow to be operated or used any business or establishment, any part of which contains a sexually oriented use, without first complying with the provisions of this part of the Zoning Ordinance as set forth below.
- B. In addition to any and all other necessary licenses and permits, no form of sexually oriented use shall be allowed to operate or continue to operate until a certificate of registration is filed with the Town Clerk containing:
1. The name and address of the business or establishment subject to the provisions of this part of the Zoning Ordinance.
 2. The names, business and home addresses and business or home phone numbers of the owner(s) of the business or establishment subject to the provisions of this part of the Zoning Ordinance.
 3. If the entity registering under this section is not a natural person, the registration shall include the names, business and home addresses and business or home phone numbers of all directors, officers, general partners or managing partners of the business.
 4. The date of the initiation of the sexually oriented business.

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5. The exact nature of the sexually oriented use, specifying whether it is a sexually oriented media store, a sex shop, a sexually oriented motion picture theater, or a sexually oriented cabaret or theater.
 6. If the premises or the building in which the business containing the sexually oriented use is located is leased, a copy of the lease showing that the petitioner under this Section has control of the premises, and the name, address and telephone number of the landlord.
 7. The petitioner shall also submit a plan drawn to appropriate scale of the premises proposed for registration indicating the areas to be covered by the registration, all windows, doors, entrances and exits and the fixed features of the proposed registered premises. The term "fixed features" shall include walls, stages, immovable partitions, projection booths, admission booths, concession booths and stands, immovable counters and similar appurtenances that are permanent.
 8. The petitioner shall state all criminal convictions, the nature of this conviction and location.
- C. If there occurs any change in the information required for the information of registration or the certification of registration, the Town Clerk shall be notified of such change and a new or amended certificate filed within 30 days of such change.
- D. No certificate of registration issued under the provisions of this part of the Zoning Ordinance shall be transferable to any person other than the registrant, nor shall a certificate of registration be transferable for use at any premises, building or location other than stated in the certificate of registration. Relocation of the business requires a new registration, in accordance with the provisions of this section.
- E. The owner, manager or agent of any sexually oriented use shall cause a copy of the certificate of registration issued under the provisions of this part of the Zoning Ordinance to be displayed at eye level in a portion of the premises that is regularly open to customers of the business.
- F. Any knowingly false statement or any statement which the registrant or petitioner should reasonably have known to be false which is provided in the certificate of registration or any document or information supplied therewith shall be grounds for denial, rejection, suspension or revocation of the certificate of registration.
- G. It is a violation of this part of the Zoning Ordinance for the owner or person in control of any property to establish or operate thereon or to permit a sexually oriented use without having in force a certificate of registration complying with this subsection.

Sec. 5.10.4. **Review Procedure**

- A. Upon receipt of an application for a certificate of registration under this part, the Town Clerk shall review it for completeness. If the application is incomplete, the Town Clerk shall, within five business days of receiving such application, return it to the petitioner, with a form or letter indicating that it is incomplete, identifying the item(s) that are missing, and stating that the incomplete application will not be processed.
- B. If the application is complete, the Town Clerk shall, no later than the end of the fifth day after receipt of the application, forward it to the Zoning Enforcement Officer and the Chief of Police for review

and comment determination regarding compliance with § 6-6-5. The Town Clerk shall request that each of these officials provide a written review determination of compliance or non-compliance within 14 days of receiving the application; if either official fails to act within that time, such official shall be deemed to have recommended approval. Upon receipt of the reviews determinations from these officials, but no later than the 21st business day after receiving the application, the Town Clerk shall act in accordance with the following sub-section.

- C. If the Town Clerk, after receiving the determinations of the Chief of Police and Zoning Enforcement Officer, indicating that the application shows that the proposed business application will conform with the standards set out in § 6-6-5, then the Clerk shall approve the application on or before the end of the 21st day after receipt of the complete application.
- D. If the Town Clerk receives a determination from the Chief of Police or the Zoning Enforcement Officer that the application shows that the business fails or will fail in any way to conform to the standards set out in § 6-6-5, then the Clerk shall disapprove the application, acting within such time, and shall, in writing, notify the petitioner that the application has been denied and shall specify the standards with which the business would not conform. In making their determination, the Chief of Police and the Zoning Enforcement Officer shall identify those standards set out in § 6-6-5 which the application fails or will fail in any way.
- E. Notification of denial shall be by certified mail and shall be sent to the address on the registration application, which shall be considered to be the correct address.

Sec. 5.10.5. **Standards for Review**

A. **Personal**

The Chief of Police shall determine that the application fails to conform to the code if an investigation indicates that any owner, officer, director, general partner or managing partner of the proposed establishment:

1. Has had a registration under this part of the Zoning Ordinance or its predecessors revoked during the previous five years;
2. Has been convicted of prostitution, pandering, solicitation for any type of sex act, rape, or any other sexual offense that is a felony under New York law, regardless of where the conviction took place, within the previous ten years; or
3. Has been convicted of possessing, manufacturing or selling any unlawful drugs, or trafficking illegally in prescription drugs.

B. **Physical Location and Design.**

The Building Commissioner shall determine that the application fails to conform to the code if a review of the application indicates that the proposed location of the business or, in the case of a sexually oriented cabaret, sexually oriented motion picture theater or sexually oriented theater, that the proposed location does not meet the required setbacks for sexually oriented business or the layout of the proposed business does not conform with the requirements of § 6-6-2A.

C. **Application**

The Clerk shall deny the application if either the Chief of Police or Zoning Enforcement Officer finds that any statement in the application is materially false and that the petitioner knew, or should have known, that it was false or that the provisions of § 6-6-5 have not met the requirements of the code.

D. **Other**

Unless the Clerk makes one of the negative findings set forth in sub-sections A, B and C of this section, the Clerk shall approve the license, conditioned only on payment of the required fee.

E. **Appeal**

Any person aggrieved by a decision of the Clerk hereunder may appeal the decision to the Zoning Board of Appeals in accordance with § 8-13.

Sec. 5.10.6. **Term of Registration**

- A. All registrations issued under this part of this Zoning Ordinance shall be classified as annual registrations which shall be paid for on or before October 1 and shall expire on September 30 of the following year. A registration beginning business after October 1 and before April 1 may obtain a new registration upon application and the payment of the appropriate annual registration fee, and such registration shall expire on the following September 30. A registrant beginning business after March 31 and before October 1 may obtain a new registration upon application and the payment of 1/2 of the appropriate annual registration fee required by the Town Board. Such registration shall expire on September 30 of the same year. The provisions of this subsection shall not affect any other provisions of this part of the Zoning Ordinance.
- B. A registrant under this Section shall be entitled to a renewal of his, her or its annual registration from year to year, as a matter of course, on or before October 1, by presenting the registration for the previous year or satisfactory evidence of its loss or destruction to the Town Clerk and by paying the appropriate registration fee.

Sec. 5.10.7. **Revocation**

- A. The registration issued under this part of this Zoning Ordinance may be revoked if the owner, general partner, managing partner, officer or director of the registrant is convicted of a criminal act which would have been the basis for denial of the application under § 6-6-5A. If the Chief of Police learns of such a conviction, the Chief of Police shall notify the Town Clerk. Upon notification, the Town Clerk shall send Notice of Proposed Revocation to the registrant at the establishment address. Such notice shall provide that the registration will be revoked unless it is appealed to the Zoning Board of Appeals in accordance with § 8-13. If a timely appeal is not filed with the Zoning Board of Appeals, the registration shall be automatically revoked without further action by the Town Clerk, and the establishment will thereafter be considered an unlawful use, subject to the enforcement actions provided in this Ordinance.
- B. If the Zoning Enforcement Officer learns of a violation of the provisions of this ordinance, the Zoning Enforcement Officer shall so notify the Town Clerk. Upon notification, the Town Clerk shall

send Notice of Proposed Revocation to the registrant at the establishment address. Such notice shall provide that the registration will be revoked unless it is appealed to the Zoning Board of Appeals in accordance with § 8-13. If a timely appeal is not filed with the Zoning Board of Appeals, the registration shall be automatically revoked without further action by the Town Clerk, and the establishment will thereafter be considered an unlawful use, subject to the enforcement actions provided in this Ordinance.

Sec. 5.10.8. **Limitations on Board of Zoning Appeals**

The authority and duties of the Board of Zoning Board of Appeals when acting under this Section shall be modified as follows:

- A. The Board may reverse or affirm a decision of the Town Clerk to approve or deny registration or a proposal by the Town Clerk to revoke a registration but shall not have any other authority to modify the action of the Town Clerk; and
- B. The matter shall be considered at a public meeting, with the opportunity for the petitioner, the appellant if not the petitioner, and the Town Clerk and their witnesses to be heard, but it shall not be subject to a public hearing as otherwise defined herein;
- C. The time limit for action by the Board under § 8-13-5B shall be reduced to 45 days after the filing of the appeal; and
- D. If the Board fails to act within said 45-day period, the petitioner may at any time request from the Town Clerk a "certificate of deemed denial," and the Town Clerk shall forthwith issue such a certificate; the applicant may rely on such certificate as a final action by the Town which may then be appealed to a court of competent jurisdiction.

Sec. 5.10.9. **Businesses Prohibited**

The following businesses are specifically prohibited in the Town:

- A. A massage parlor, studio or other establishment operated by a person who is not licensed by the State of New York as a massage therapist or as a medical practitioner;
- B. A sexually oriented encounter center;
- C. A sexually oriented video arcade or a sexually oriented viewing booth or arcade booth;
- D. A lingerie modeling establishment unless operated as a sexually oriented cabaret or theater in accordance with the requirements of this section; and
- E. A nude or sexually oriented modeling establishment unless operated as a sexually oriented cabaret or theater in accordance with the requirements of this section.

DIV. 5.11. TELECOMMUNICATION FACILITIES

Sec. 5.11.1. Definitions

ACCESSORY STRUCTURE OR FACILITY. An accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities, and located on the same property or lot as the Wireless Telecommunications Facilities, including but not limited to generators or other emergency power supply equipment, utility or transmission equipment storage sheds or cabinets, or fencing.

ANTENNA OR ANTENNAE. A system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals. Such shall include, but not be limited to radio, television, cellular, paging, personal telecommunications services (PCS), microwave telecommunications and services not licensed by the FCC, but not expressly exempt from the Town's siting, building and permitting authority.

APPLICATION. All necessary and appropriate documentation that an applicant submits in order to receive a special use permit for wireless telecommunications facilities.

CO-LOCATION. The use of a single tower or structure to support antennae from multiple providers of wireless services.

COMMERCIAL IMPRACTICABILITY OR COMMERCIALLY IMPRACTICABLE. The inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a particular return on investment or profit, standing alone, shall not deem a situation to be "commercially impracticable" and shall not render an act or the terms of an agreement "commercially impracticable."

HEIGHT. The distance measured from the pre-existing grade level to the highest point on the tower or structure, including any antenna or lightning protection device.

MODIFICATION OR MODIFY. The addition, removal or change of any of the physical and visually discernable components or aspects of a wireless facility, such as antennae, cabling, radios, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or changeout of equipment for better or more modern equipment. Adding a new wireless carrier or service provider to a telecommunications tower or telecommunications site is a modification. A modification shall not include the replacement of any components of a wireless facility where the replacement is technically equivalent to the component being replaced or for any matters that involve the normal repair and maintenance of a wireless facility.

PERSON. Any individual, corporation, estate, trust, partnership, joint-stock company, an association of two or more persons having a joint common interest, or any other entity.

PERSONAL WIRELESS FACILITY. See definition for "wireless telecommunications facilities."

PERSONAL WIRELESS SERVICES OR PWS OR PERSONAL TELECOMMUNICATIONS SERVICE OR PCS.

The same meaning as defined and used in the Telecommunications Act of 1996.

PETITIONER. Any wireless service provider submitting an application for a special use permit for wireless telecommunications facilities.

TELECOMMUNICATION SITE. See definition for "wireless telecommunications facilities."

SPECIAL USE PERMIT. The official document or permit by which a petitioner is allowed to construct and use wireless telecommunications facilities as granted or issued by the Town.

STEALTH OR STEALTH TECHNOLOGY. Minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such wireless telecommunications facilities, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances.

TELECOMMUNICATIONS. The transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.

TELECOMMUNICATIONS STRUCTURE. A structure used in the provision of services described in the definition of "wireless telecommunications facilities."

TEMPORARY. Temporary in relation to all aspects and components of this local law, something intended to, or that does, exist for fewer than 90 days.

WIRELESS TELECOMMUNICATIONS FACILITIES (WTF). Includes "telecommunications tower" and "tower" and "telecommunications site" and "personal wireless facility" and any commercial equipment or location used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, radio and television broadcast services and private radio communications services, which are regulated by the Federal Communications Commission both in accordance with the Telecommunications Act of 1996 and other federal laws. A telecommunication facility shall include antenna(e), principal and accessory telecommunication equipment and supporting masts, monopoles and structures, buildings and appurtenances servicing same.

Sec. 5.11.2. **Purpose**

The purpose of this Section is to:

- A. Implement an application process for persons seeking a special use permit for WTFs;
- B. Establish a policy for examining an application for and issuing a special use permit for WTF that is both fair and consistent.
- C. Promote and encourage, wherever possible, the sharing and/or co-location of facilities-WTF among service providers;
- D. Promote and encourage, wherever possible, the placement, height, appearance and quantity of WTFs in such a manner, including but not limited to the use of stealth technology, to minimize adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent

to, surrounding, and in generally the same area as the requested location of such WTFs, which shall mean using the least visually and physically intrusive facility that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology will be strongly encouraged to ensure that WTFs are compatible with surrounding land use.

- E. Promote and encourage the site development standards which preserve the character of residential areas and which ensure that adequate screening and stealth technology is used.
- F. Ensure that WTFs are limited to those for which the petitioner has demonstrated a need for service essentially within the Town of Amherst.

Sec. 5.11.3. **Special Use Permit Application and Other Requirements**

- A. No person shall be permitted to site, place, build, construct, modify or prepare any site for the placement or use of, WTFs as of the effective date of this Section without having first obtained a special use permit for a WTF. Notwithstanding anything to the contrary in this Section, no special use permit shall be required for those non-commercial exceptions noted in the definition of WTFs.
- B. All petitioners for a special use permit for a WTF or any modification of such facility shall comply with the requirements set forth in this Section. The ZBA is the officially designated agency or body of the Town to whom applications for a special use permit for a WTF must be made, and that is authorized to review, analyze, evaluate and make decisions with respect to granting or not granting, recertifying or not recertifying, or revoking special use permits for a WTF. The Town may at its discretion delegate or designate other official agencies of the Town to accept, review, analyze, evaluate and make recommendations to the ZBA with respect to the granting or not granting, recertifying or not recertifying or revoking special use permits for a WTF.
- C. An application for a special use permit for WTFs shall be signed on behalf of the petitioner by the person preparing the same and with knowledge of the contents and representations made therein and attesting to the truth and completeness of the information. The landowner, if different than the petitioner, shall also sign the application. At the discretion of the Town, any false or misleading statement in the application may subject the petitioner to denial of the application without further consideration or opportunity for correction.
- D. Applications not meeting the requirements stated herein or which are otherwise incomplete, may be rejected by the Town.
- E. The petitioner shall include a statement in writing:
 - 1. That the petitioner's proposed WTFs shall be maintained in a safe manner, and in compliance with all conditions of the special use permit, without exception, unless specifically granted relief by the ZBA in writing, as well as all applicable and permissible local codes, ordinances, and regulations, including any and all applicable Town, state and federal laws, rules, and regulations;
 - 2. That the construction of the WTFs is legally permissible, including, but not limited to the fact that the petitioner is authorized to do business in the state, and that the petitioner is licensed by the FCC to provide wireless telecommunications service in the Town.

- F. No WTF shall be installed or constructed until the application is reviewed and approved by the ZBA, and the special use permit and all appropriate building, electrical, plumbing and fire prevention permits have been issued.
- G. All applications for the construction or installation of new WTFs shall contain the information hereinafter set forth. The application shall be signed by an authorized individual on behalf of the petitioner. Where a certification is called for, such certification shall bear the signature and seal of a professional engineer licensed in the State of New York. The application shall include the following information:
1. Documentation that demonstrates the need for the WTF to provide service primarily and essentially within the Town. Such documentation shall include propagation studies of the proposed site and all adjoining planned, proposed, in-service or existing sites;
 2. The name, address and phone number of the person preparing the report;
 3. The name, address, and phone number of the property owner, operator, and petitioner, and to include the legal form of the petitioner;
 4. The postal address and tax map parcel number of the property;
 5. The zoning district in which the property is situated;
 6. Size of the property stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines along with the setback dimensions from the WTF to the abutting property lines;
 7. The location and use of all structures within 500 feet from the WTF;
 8. The location, size and height of all structures on the property which is the subject of the application;
 9. The location, size and height of all proposed and existing antennae and all appurtenant structures;
 10. The type, locations and dimensions of all proposed and existing landscaping, and fencing;
 11. The number, type and design of the tower(s) and antenna(e) proposed and the basis for the calculations of the tower's capacity to accommodate multiple users;
 12. The make, model and manufacturer of the tower and antenna(e);
 13. A description of the proposed tower and antenna(e) and all related fixtures, structures, appurtenances and apparatus, including height above pre-existing grade, materials, color and lighting;
 14. The frequency, modulation and class of service of radio or other transmitting equipment;
 15. The actual intended transmission and the maximum effective radiated power of the antenna(e);
 16. Direction of maximum lobes and associated radiation of the antenna(e);
 17. Certification that the cumulative NIER levels at the proposed site are within the threshold levels adopted by the FCC;

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18. Certification that the proposed antenna(e) will not cause interference with other telecommunications devices;
 19. A copy of the FCC license applicable for the intended use of the WTF;
 20. Certification that a topographic and geomorphologic study and analysis has been conducted, and that taking into account the subsurface and substrata, and the proposed drainage plan, that the site is adequate to assure the stability of the proposed WTFs on the proposed site.
 21. A statement of the proposed emergency power supply. The storage of fuel on the site shall be identified. The type of fuel and quantities shall be provided. If lead acid batteries are proposed, a statement of battery classification and location shall be submitted. The statement shall provide the cumulative acid weight of all batteries at the proposed facility. Upon approval of the application for the WTF, the petitioner shall provide this information to the local fire department.
- H. In the case of a new tower, the petitioner shall be required to submit a written report demonstrating its efforts to secure shared use of existing tower(s) or the use of alternative buildings or other structures within the Town. Such report shall include an investigation of every Tower and every structure with a height exceeding 60 feet from finished grade within two miles of the proposed location of the new tower. Copies of written requests and responses for shared use shall be provided to the Town in the application, along with any letters of rejection stating the reason for rejection.
- I. The petitioner shall certify that the telecommunication facility, foundation and attachments are designed and will be constructed to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads.
- J. The petitioner shall certify that the WTFs will be effectively grounded and bonded so as to protect persons and property and installed with appropriate surge protectors.
- K. A petitioner shall be required to submit a written report identifying buried conductors within 50 feet of any non-building mounted WTF.
- L. A petitioner may be required to submit an environmental assessment analysis and a visual addendum. Based on the results of the analysis, including the visual addendum, the Town may require submission of a more detailed visual analysis. The scope of the required environmental and visual assessment will be reviewed at the pre-application meeting.
- M. The petitioner shall furnish a visual impact assessment, which shall include:
1. A "Zone of Visibility Map" which shall be provided in order to determine locations from which the WTF may be seen.
 2. Pictorial representations of "before and after" views from key viewpoints both inside and outside of the Town as may be appropriate, including but not limited to state highways and other major roads; state and local parks; other public lands; historic districts; preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided, concerning the appropriate key sites at a pre-application meeting.

3. An assessment of the visual impact of the tower base, guy wires and accessory structures from abutting and adjacent properties and streets as relates to the need or appropriateness of screening.
- N. The petitioner shall demonstrate and provide in writing and/or by drawing how it shall effectively screen from view the base and all related facilities and structures of the proposed WTFs.
- O. Any and all representations made by the petitioner to the Town on the record during the application process, whether written or verbal, shall be deemed a part of the application and may be relied upon in good faith by the Town.
- P. All utilities at a WTF site shall be installed underground and in compliance with all laws, ordinances, rules and regulations of the Town, including specifically, but not limited to, the applicable building, plumbing, electrical and fire codes of the Town, the National Electrical Safety Code and the National Electrical Code where appropriate.
- Q. All WTFs shall be sited so as to be the least visually intrusive reasonably possible and thereby have the least adverse visual effect on the environment and its character, on existing vegetation, and on the residences in the area of the WTF.
- R. Both the WTF and any accessory structure that are higher than or not contained within fencing, walls or other visual screening shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and/or to harmonize with the natural surroundings. This shall include the utilization of stealth or concealment technology as may required by the Town.
- S. At a telecommunications site, an access road, turnaround space and parking shall be provided to assure adequate emergency and service access. Access road construction shall be suitable for the weight of vehicles that will use the road during construction and maintenance activities, as approved by the Building Department. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion.
- T. A person who holds a special use permit for a WTF shall construct, operate, maintain, repair, provide for removal of, modify or restore the permitted WTFs in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, state, or United States, including but not limited to the most recent editions of the National Electrical Safety Code and the National Electrical Code, as well as accepted and responsible workmanlike industry practices and recommended practices of the National Association of Tower Erectors. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding codes, rules and regulations, the more stringent shall apply.
- U. A holder of a special use permit granted under this ordinance shall obtain, at its own expense, all permits and licenses required by applicable law, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the petitioner.

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- V. An applicant shall submit to the ZBA one original and nine copies of the completed application. The Town of Amherst reserves the right to request additional copies of the completed application if deemed necessary by the Town. Written notification of the application shall be provided in accordance with the provisions of the Zoning Ordinance of the Town of Amherst and applicable NYS laws. The Town Planning Department shall be provided with a copy of the application.
- W. The petitioner shall examine the feasibility of designing a proposed tower to accommodate future demand for a minimum of five additional commercial applications, for example, future co-locations. The tower shall be structurally designed to accommodate a minimum of five additional antenna arrays equal to those of the petitioner, and located as close to the petitioner's antenna as possible without causing interference. This requirement may be waived, provided that the petitioner, in writing, demonstrates that the provisions of future shared usage of the Tower is not technologically feasible, is commercially impracticable or creates an unnecessary and unreasonable burden, based upon:
1. The foreseeable number of FCC licenses available for the area;
 2. The kind of WTF site and structure proposed;
 3. The number of existing and potential licenses without WTFs spaces/sites;
 4. Available space on existing and approved towers.
- X. The owner of the proposed new tower, and his or her successors in interest, shall negotiate in good faith for the shared use of the proposed tower by other wireless service providers in the future, and shall:
1. Respond within 60 days to a request for information from a potential shared-use petitioner;
 2. Negotiate in good faith concerning future requests for shared use of the new tower by other telecommunications providers;
 3. Allow shared use of the new tower if another telecommunications provider agrees in writing to pay reasonable charges. The charges may include, but are not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, less depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
 4. Failure to abide by the conditions outlined above may be grounds for revocation of the special use permit for the tower.
- Y. There shall be a pre-application meeting with the Building Department, the Planning Department and the Town's designated consultant. The purpose of the pre-application meeting will be to address issues which will help to expedite the review and permitting process. A pre-application meeting, at the discretion of the Building Department, may also include a site visit. Costs of the Town's consultants to prepare for and attend the pre-application meeting will be borne by the petitioner.
- Z. The holder of a special use permit shall notify the Town of any intended modification of a WTF and shall apply to the Town to modify, relocate or rebuild a WTF.

AA. The petitioner will provide a written copy of an analysis, completed by a qualified individual or organization, to determine if the tower or existing structure intended to support wireless facilities requires lighting under Federal Aviation Administration (FAA) Regulation Part 77. This requirement shall be for any new tower or for any existing structure or building where the application increases the height of the structure or building. If this analysis determines that the FAA must be contacted, then all filings with the FAA, all responses from the FAA and any related correspondence shall be provided in a timely manner.

AB. All information necessary to satisfy SEQRA requirements.

Sec. 5.11.4. **Location of WTFs**

- A. Petitioners for WTFs shall locate, site and erect said WTFs in accordance with the following priorities, one being the highest priority and seven being the lowest priority.
1. On existing towers or other structures without increasing the height of the tower or structure;
 2. On Town-owned properties;
 3. On existing towers or other structures when a material increase in height is required;
 4. On properties in areas zoned for industrial use;
 5. On properties in areas zoned for business or non-residential use;
 6. On properties in areas zoned for agricultural use.
 7. On properties in areas zoned for residential use.
- B. If the proposed site is not proposed for the highest priority listed above, then a detailed explanation must be provided as to why a site of a higher priority was not selected.
- C. A petitioner may not bypass sites of higher priority by stating the site proposed is the only site leased or selected. An application shall address co-location as an option. If such option is not proposed, the petitioner must explain to the reasonable satisfaction of the ZBA why co-location is commercially impracticable or otherwise impracticable. Agreements between providers limiting or prohibiting co-location shall not be a valid basis for any claim of commercial impracticability or hardship.
- D. Notwithstanding the above, the ZBA may approve any site located within an area in the above list of priorities, provided that the ZBA finds that the proposed site is in the best interest of the health, safety and welfare of the Town and will further the policies and goals set forth in § 6-7-2.
- E. The petitioner shall submit a written report demonstrating the petitioner's review of the above locations in order of priority, demonstrating the technological reason for the site selection. If appropriate, based on selecting a site of lower priority, a detailed written explanation as to why sites of a higher priority were not selected shall be included with the application.

Sec. 5.11.5. **Shared Use of WTFs and Other Structures**

- A. Locating on existing towers or other structures without increasing the height, shall be preferred by the Town, as opposed to the construction of a new tower. The petitioner shall submit a comprehensive report inventorying existing towers and other suitable structures within two miles of

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the location of any proposed new tower, unless the petitioner can show that some other distance is more reasonable and demonstrate conclusively why an existing tower or other suitable structure can not be used.

- B. A petitioner intending to locate on an existing tower or other suitable structure shall be required to document the intent of the existing owner to permit its use by the petitioner.
- C. Such shared use shall consist only of the minimum antenna array technologically required to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.
- D. Tower structures existing prior to the effective date of this ordinance, in compliance with all of the Town's ordinances prior to the effective date of this ordinance, but which are not in compliance with the current ordinance, are legally non-conforming structures and may continue in existence as legally non-conforming structures.

Sec. 5.11.6. **Height of Telecommunications Towers**

- A. The maximum permitted height of a new WTF shall be 100 feet. The maximum permitted height of the WTF may be exceeded if the petitioner provides satisfactory technical justification to the ZBA.
- B. The petitioner shall submit documentation justifying the total height of any tower, facility and/or antenna and the basis therefore. Such documentation will be analyzed in the context of the justification of the height needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown.

Sec. 5.11.7. **Appearance and Visibility of WTFs**

- A. WTFs shall not be artificially lighted or marked, except as required by law.
- B. Towers shall be galvanized or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements established by the Building Department of the Town of Amherst.
- C. If lighting is required, the petitioner shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under applicable regulations.
- D. No freestanding lattice towers or guyed towers shall be permitted.
- E. Visual screening, including but not limited to landscaping, walls and fences, shall be approved by the ZBA. The Town's landscape architect and consultant shall provide recommendations to the ZBA regarding visual screening.
- F. No outside storage of vehicles, materials or waste shall be allowed, except for limited periods when the facility is undergoing additions, repair, renovations, modifications or servicing.
- G. The facility shall be maintained in good order and repair at all times in accordance with applicable Town regulations.

Sec. 5.11.8. **Security of WTFs**

- A. All WTFs and antennae shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- B. All antennae, towers and other supporting structures, including guy wires, shall be made inaccessible to individuals and constructed or shielded in such a manner that they cannot be climbed or collided with. Transmitters and telecommunications control points shall be installed in such a manner that they are readily accessible only to persons authorized to operate or service them.
- C. All antennae, towers and auxiliary structures shall be properly bonded and grounded to protect the facility and surrounding properties from lightning discharges.
- D. All towers and accessory structures shall be surrounded by a fence or wall that completely provides visual screening of all accessory structures associated with the WTF. This Section shall not apply to signage as required in § 6-7-9.
- E. There shall be no permanent climbing pegs within 20 feet of the ground adjacent to the tower.
- F. Towers shall have a fenced, restricted zone, equal in distance to 1/4 of the tower height in each direction surrounding the tower to ensure safety from ice/debris fall. This area may be reduced by the Town for structures with flush-mounted antennae. The restricted zone will not apply to facilities with antennae mounted inside the structure or facilities mounted on existing utility poles or structures.

Sec. 5.11.9. **Signage**

A WTF shall contain a sign no larger than four square feet in order to provide adequate notification to persons in the immediate area of the presence of an Antenna that has transmission capabilities and shall contain the name(s) of the owner(s) and operator(s) of the antenna(e) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the petitioner and be visible from the access point of the site and must identify the equipment owner of the shelter or cabinet. The sign shall not be lighted, unless lighting is required by applicable law, rule or regulation. No other signage, including advertising, shall be permitted.

Sec. 5.11.10. **Lot Size and Setbacks**

All proposed towers not mounted on existing buildings or structures and any other proposed WTF structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: A distance equal to the height of the proposed tower or WTF structure plus 10 percent of the height of the tower or structure, or the existing setback requirement of the underlying zoning district, whichever is greater. In addition, the facility shall be separated from residential property lines, school property lines, designated historical districts, historical landmarks and historical sites by the minimum distance of 500 feet. The ZBA may modify this condition if the facility is attached to an existing nonresidential structure, or if an easement has been granted or other agreement with all property owners within 500 feet has been reached. In an agricultural district, the WTF shall be located a minimum of 500 feet from any dwelling unit. Any accessory structure shall be located so as to comply with the applicable minimum setback requirements for the property on which it is situated.

Sec. 5.11.11. **Retention of Expert Assistance and Reimbursement by Petitioner**

- A. The Town may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including the construction and modification of the site, once permitted, and any requests for recertification.
- B. A petitioner shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of any application including the construction and modification of the site, once permitted. The initial deposit shall be \$5,000. The placement of the \$5,000 with the Town shall precede the pre-application meeting. The Town will maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for its services in reviewing the application, including the construction and modification of the site, once permitted. If at any time during the process this escrow account has a balance less than \$1,000, the petitioner shall immediately, upon notification by the Town, replenish said escrow account so that it has a minimum balance of \$5,000 or a lesser amount if stipulated by the Town. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application. In the event that the amount held in escrow by the Town is more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the petitioner.
- C. The total amount of the funds needed as set forth in subsection B of this Section may vary with the scope and complexity of the project, the completeness of the application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or modification.

Sec. 5.11.12. **Action on an Application for a Special Use Permit for WTFs**

- A. The Building Department and the Planning Department of the Town of Amherst and the designated consultant will undertake a review of an application pursuant to this local law in a timely fashion, and shall act within a reasonable period of time given the relative complexity of the application and the circumstances, with due regard for the public's interest and the petitioner's desire for a timely resolution.
- B. The Building Department of the Town of Amherst and/or the designated consultant may refer any application or part thereof to any advisory or other committee for a non-binding recommendation.
- C. The site plan for the proposed WTF shall be reviewed by the Planning Department before a hearing is held by the ZBA. The Planning Department shall submit a written report to the ZBA containing its analysis of the proposal under the standards set forth in the applicable sections of this Zoning Ordinance. The Planning Department analysis is advisory in nature and is not binding on the ZBA. This review of the site plan by the Planning Department shall supersede all other site plan review requirements as established in the Zoning Ordinance.
- D. After the public hearing and after formally considering the application, the ZBA may approve, approve with conditions, or deny a special use permit. Its decision shall be in writing and shall be supported

by substantial evidence contained in a written record. The burden of proof for the grant of the permit shall always be upon the petitioner.

- E. If the ZBA denies the special use permit for WTFs, then the petitioner shall be notified of such denial in writing within 10 calendar days of the Town's action.
- F. The timeframe for action on special use permit applications for WTFs shall be consistent with all applicable FCC regulations.

Sec. 5.11.13. **Recertification of a Special Use Permit for WTFs**

- A. Between 12 months and six months prior to the five-year anniversary date after the effective date of the special use permit and all subsequent five-year anniversaries of the effective date of the original special use permit for WTFs, the holder of a special use permit for such WTFs shall submit a signed written request to the Town for recertification. In the written request for recertification, the holder of such special use permit shall note the following:
 - 1. The name of the holder of the special use permit for the WTFs;
 - 2. If applicable, the number or title of the special use permit;
 - 3. The date of the original granting of the special use permit;
 - 4. Whether the WTFs have been moved, re-located, rebuilt, or otherwise visibly modified since the issuance of the special use permit and if so, in what manner;
 - 5. If the WTFs have been moved, re-located, rebuilt, or otherwise visibly modified, then whether the Town approved such action, and under what terms and conditions, and whether those terms and conditions were complied with;
 - 6. That the WTFs are in compliance with the special use permit and compliance with all applicable codes, laws, rules and regulations;
 - 7. Recertification that the tower and attachments both are designed and constructed and continue to meet all local, Town, state and federal structural requirements for loads, including wind and ice loads. Such recertification shall be by a professional engineer licensed in the State of New York, the cost of which shall be borne by the petitioner.
 - 8. The holder of the special use permit shall certify to the Town that the cumulative NIER levels at the site are within the threshold levels adopted by the FCC.
- B. If, after such review, the Town determines that the permitted WTFs are in compliance with the special use permit and all applicable statutes, laws, local laws, ordinances, codes, rules and regulations, then the Town shall issue a recertification of the special use permit for the WTFs, which may include any new provisions or conditions that are mutually agreed upon, or that are required by applicable statutes, laws, ordinances, codes, rules or regulations. If, after such review it is determined that the permitted WTFs are not in compliance with the special use permit and all applicable statutes, laws, ordinances, codes, rules and regulations, then the Town may refuse to issue a recertification special use permit for the WTFs, and in such event, such WTFs shall not be used after the date that the petitioner receives written notice of the decision by the Town until such time as the WTF is brought into compliance. Any decision requiring the cessation of use of the WTF or imposing a penalty

shall be in writing and supported by substantial evidence contained in a written record and shall be promptly provided to the owner of the WTF.

- C. If the petitioner has submitted all of the information requested and required by this local law, and if the review is not completed, as noted in subsection B of this Section, prior to the five-year anniversary date of the special use permit, or subsequent five-year anniversaries, then the petitioner for the permitted WTFs shall receive an extension of the special use permit for up to six months, in order for the completion of the review.
- D. If the holder of a special use permit for WTFs does not submit a request for recertification of such special use permit within the time-frame noted in subsection A of this Section, then such special use permit and any authorizations granted thereunder shall cease to exist on the date of the fifth anniversary of the original granting of the special use permit, or subsequent five-year anniversaries, unless the holder of the special use permit adequately demonstrates that extenuating circumstances prevented a timely recertification request. If the Town agrees that there were legitimately extenuating circumstances, then the holder of the special use permit may submit a late recertification request or application for a new special use permit.

Sec. 5.11.14. **Extent and Parameters of Special Use Permit for WTFs**

The extent and parameters of a special use permit for WTFs shall be as follows:

- A. Such special use permit shall be non-exclusive.
- B. Such special use permit shall not be assigned, transferred or conveyed without the express prior written notification to the Town within 30 days of such assignment, transfer, or conveyance.
- C. Such special use permit may, following a hearing upon due prior notice to the petitioner, be revoked, canceled, or terminated for a violation of the conditions and provisions of the special use permit, or for a material violation of this local law after prior written notice to the holder of the special use permit.

Sec. 5.11.15. **Application Fee**

- A. At the time that a person submits an application for a special use permit for a new WTF or for a co-location on an existing WTF, such person shall pay a non-refundable application fee of \$1,500 to the Town.
- B. No application fee is required in order to rectify a special use permit for WTFs unless there has been a visible modification of the WTF since the date of the issuance of the existing special use permit for which the conditions of the special use permit have not previously been modified. In the case of any modification, the fees provided in subsection A shall apply.

Sec. 5.11.16. **Performance Security**

The petitioner must submit an analysis, certified by a NYS licensed professional engineer, of the cost of removal of the WTF and surrounding property restoration. The petitioner shall, at the petitioner's cost and expense, be required to execute and file with the Town a bond, or other form of security acceptable to the Town as to type of security and the form and manner of execution, in an amount approved by the ZBA, but not less than twice the certified cost of said removal. The full amount of the bond or

security shall remain in full force and effect throughout the term of the special use permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that which existed prior to the issuance of the original special use permit.

Sec. 5.11.17. **Reservation of Authority to Inspect WTFs**

In order to verify that the holder of a special use permit for WTFs and any and all lessees, renters, and/or licensees of WTFs place and construct such facilities, including towers and antennae, in accordance with all applicable technical, safety, fire, building, and zoning codes, laws, ordinances and regulations and other applicable requirements, the Town may inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, modification and maintenance of such facilities, including, but not limited to, towers, antennae and buildings or other structures constructed or located on the permitted site.

Sec. 5.11.18. **Indemnification**

- A. Any application for WTFs that is proposed for Town property, pursuant to this local law, shall contain a provision with respect to indemnification. Such provision shall require the petitioner, to the extent permitted by the law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the Town, and its officers, boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising therefrom, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said facility, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B. Notwithstanding the requirements noted in subsection A of this Section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a special use permit for WTFs.

Sec. 5.11.19. **Default or Revocation**

- A. If WTFs are repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this local law or of the special use permit, then the Town shall notify the holder of the special use permit in writing of such violation. Such notice shall specify the nature of the violation or non-compliance and that the violations must be corrected within 30 days of the date of the notice, or of the date of personal service of the notice, whichever is earlier. Notwithstanding anything to the contrary in this subsection or any other Section of this local law, if the violation causes, creates or presents an imminent danger or threat to the health or safety of lives or property, the Town may, at its sole discretion, order the violation remedied within 24 hours.

- B. If within the period set forth in subsection A above the WTFs are not brought into compliance with the provisions of this ordinance, or of the special use permit, or substantial steps are not taken in order to bring the affected WTFs into compliance, then the Town may revoke such special use permit for WTFs, and shall notify the holder of the special use permit within 48 hours of such action.

Sec. 5.11.20. **Removal of WTFs**

- A. Under any of the following circumstances, the Town may determine that the health, safety and welfare interests of the Town warrant and require the removal of WTFs.
1. WTFs with a permit have been abandoned (i. e., not used as WTFs) for a period exceeding 90 consecutive days or a total of 180 days in any 365 day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall commence within 90 days. The owner or user of the WTFs shall notify the Town within 10 days of the discontinuance of the use of the facilities or any part thereof.
 2. Permitted WTFs fall into such a state of disrepair that it creates a health or safety hazard.
 3. WTFs have been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required special use permit, or any other necessary authorization.
- B. If the Town makes such a determination as noted in subsection A of this Section, then the Town shall notify the holder of the special use permit for the WTFs within 48 hours that said WTFs are to be removed.
- C. The holder of the special use permit, or its successors or assigns, shall dismantle and remove such WTFs, and all associated structures and facilities, from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability, within 90 days of receipt of written notice from the Town. However, if the owner of the property upon which the WTFs are located wishes to retain any access roadway to the WTFs, the owner may do so with the approval of the Town.
- D. If WTFs are not removed or substantial progress has not been made to remove the WTFs within 90 days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the WTFs at the sole expense of the owner or special use permit holder.
- E. If, the Town removes, or causes to be removed, WTFs, and the owner of the WTFs does not claim and remove it from the site to a lawful location within 30 days, then the Town may take steps to declare the WTFs abandoned, and sell all equipment and components thereof.
- F. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the WTFs, for no more 90 days, during which time a suitable plan for sale, lease, sub-lease, removal, conversion, or re-location of the affected WTFs shall be developed by the holder of the special use permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the special use permit and the Town. If such a plan is not developed, approved and executed within the 90-day time period, then the Town may take possession of and dispose of the affected WTFs in the manner provided in this Section.

Sec. 5.11.21. **Relief**

The ZBA may grant relief, waiver or exemption from any aspect or requirement of this local law. Any petitioner desiring relief, waiver or exemption from any aspect or requirement of this local law may request such at the pre-application meeting, provided that the relief or exemption is contained in the original application for either a special use permit, or in the case of an existing or previously granted special use permit a request for modification of its tower and/or facilities. Such relief may be temporary or permanent, partial or complete. However, the burden of proving the need for the requested relief, waiver or exemption is solely on the petitioner. The petitioner shall bear all costs of the Town in considering the request and the relief, waiver or exemption. No such relief or exemption shall be approved unless the petitioner demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant effect on the health, safety and welfare of the Town, its residents and other service providers.

Sec. 5.11.22. **Adherence to State and Federal Rules and Regulations**

- A. To the extent that the holder of a special use permit for WTFs has not received relief, or is otherwise exempt, from appropriate state and/or Federal agency rules or regulations, then the holder of such a special use permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any state or federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any state or federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a special use permit for WTFs, then the holder of such a special use permit shall conform the permitted WTFs to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of 24 months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

DIV. 5.12. ACCESSORY USES/STRUCTURES

Sec. 5.12.1. General Standards

- A. Any accessory use may be permitted provided that it is customarily associated with a primary use that may be permitted by right consistent with the district use tables in **Parts 3, 4, and 5**. The establishment of such accessory uses shall be consistent with the following standards.
1. The accessory use shall be subordinate to the primary use or principal structure;
 2. The accessory use shall be subordinate in area, extent or purpose to the primary use served;
 3. No accessory structure shall be located in the required front yard of the structure to which it is accessory and the street line of the street servicing it.
 4. The accessory use shall be located within the same zoning district as the primary use; and
 5. Accessory uses located in residential districts shall not be used for business purposes other than legitimate Home Occupations.
- B. The total floor area of all accessory structures and the floor area of attached or built-in garages shall not exceed 75 percent of the floor area of the principal structure, except as permitted by the ZBA in accordance with the provisions of **§ 8-13 of this Ordinance**.
- C. In the R-R and AG districts, the total floor area of all accessory structures shall not exceed 200 percent of the floor area of the principal structure, except as permitted by the ZBA in accordance with the provisions of **§ 8-13 of this Ordinance**.

Sec. 5.12.2. Auxiliary Housing Units

Where permitted as an accessory use in **Part 3**, an auxiliary housing unit may be constructed within any single-family detached dwelling following approval of a special use permit as set forth in **§ 8-6**, subject to the following standards.

- A. An auxiliary housing unit shall accommodate not more than two members of the family occupying the principal dwelling. At least one of the persons housed in the auxiliary housing unit shall be at least 60 years of age or handicapped or otherwise incapacitated to the extent that independent housing is not practical.
- B. The auxiliary housing unit shall not exceed 500 square feet.
- C. The permit for the auxiliary housing unit shall be valid for a period not exceeding two years. Thereafter, it can be renewed, from time to time, for additional two-year periods upon proof satisfactory to the ZBA that the circumstances warranting the original permit continue to exist.

Sec. 5.12.3. Commercial Recreation

Where permitted as an accessory use in **Part 4**, commercial recreation shall occupy no more than 15 percent of the gross floor area of the principal structure.

Sec. 5.12.4. **Convenience Retail and Service**

Where permitted as an accessory use in **Part 4**, a convenience retail and service facility shall be subject to the following standards.

- A. In the MFR-7 district, the facility shall be designed to serve the needs of the residents of the project and have no signs outside the building. The total gross floor area of such facility shall not exceed five square feet per dwelling unit within the project.
- B. In the MHR-8 district, the facility shall be designed to serve the needs of the residents of the manufactured home park. One identification sign not exceeding two square feet in area shall be permitted. Pole signs shall not be permitted. The total floor area shall not exceed 30 square feet per lot within the manufactured home park. Automobile drive-in restaurants shall not be permitted.

Sec. 5.12.5. **Conference Center**

Where permitted as an accessory use in the ST district, a conference center shall be subject to the following standards.

- A. The minimum district size shall be 25 acres.
- B. One conference center shall be permitted per district.

Sec. 5.12.6. **Home Occupations**

Where permitted as an accessory use in **Part 3**, a home occupation shall be subject to the following standards.

A. **General Standards**

1. A home occupation is that accessory use of a dwelling that shall constitute all or some portion of the livelihood of a person or persons living in the dwelling. The home occupation shall be incidental and subordinate to the use of the premises for residential purposes.
2. There shall be no change in the outside appearance of the building or premises or other evidence from the outside of the conduct of a home occupation.
3. No equipment or process shall be used which creates noise, vibration, glare, fumes, odors or electrical interference. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio or television receivers off the premises.
4. Instruction in music, dancing and similar subjects shall be limited to two students at a time.
5. All activities involving outside visitors, clients or deliveries shall be limited to the hours between 8 A.M. and 9 P.M.
6. Off-street parking shall be provided at the rate of one space per 200 square feet of home occupation floor area. The off-street parking spaces required for the home occupation shall be maintained in addition to the space or spaces required for the residence itself. No parking spaces, other than driveways, may be located in the required front yard setback. Parking spaces shall be screened from adjacent parcels with residential zoning using tree and

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shrub plantings, earthen berms, low walls or a combination of these methods to establish a visual screen at least 36 inches above the highest surrounding grade within two years of installation.

7. No display pertaining to the home occupation shall be visible from outside the dwelling.
8. In the R-4 district, home occupations shall be permitted only as accessory uses to detached dwelling units.
9. The area devoted to the home occupation shall not exceed 15 percent of the ground floor area of the principal structure.
10. A home occupation may be allowed in an attached dwelling unit provided that such dwelling unit has a primary exterior entrance.

B. Home Occupation Types

Home occupations shall be separated into two categories and permitted subject to the following provisions.

1. Type 1 Home Occupation

A Type 1 Home Occupation shall be deemed an accessory use for a detached dwelling unit and no further approval shall be required. Such home occupation shall meet the following standards.

- a. The business shall be conducted entirely within a dwelling or integral part of a dwelling and have no outside storage of any kind related to the home occupation.
- b. The business shall be clearly incidental and secondary to the principal use of the dwelling.
- c. The business shall be conducted only by persons residing on the premises (nonresident employees are not permitted).
- d. There shall be no identification sign, display or advertising of the home occupation on the site or structures.
- e. The business shall involve no retail sales or services provided to customers on-site, and shall not include any storage, pick-up or delivery of merchandise or equipment, except for standard parcel delivery services.

2. Type 2 Home Occupation

Following approval as a special use by the ZBA, a limited business operation may be conducted as a Type 2 Home Occupation. Upon demonstration of continued compliance with the conditions of the original approval, the Zoning Enforcement Officer shall bi-annually renew the special use permit. If violations are determined, then a new application for a special use permit shall be submitted to the ZBA. The Zoning Enforcement Officer may inspect the premises without prior notice during normal business hours. Such home occupation shall meet the following standards.

- a. The home occupation may have only one nonresident employee, assistant or associate.
- b. No more than one unlighted sign not more than two square feet in size, identifying the resident and the business, attached flat against the building, shall be permitted. Such sign may

be allowed in the required front yard along an arterial or collector street upon approval by the ZBA.

C. Exclusions to Home Occupations

No home occupation shall be permitted that has any of the following characteristics:

1. Internal or external alterations inconsistent with the residential use of the building;
2. Except for signage and parking as permitted under this Ordinance, home occupation activities shall not be visible from the street;
3. Creates a hazard to persons or property;
4. Results in electrical interference;
5. Is a nuisance; or
6. Results in outside storage or display.

D. Prohibited Home Occupations

The following are prohibited as Home Occupations:

1. Automobile and/or body and fender repairing;
2. Greenhouse, commercial nurseries and truck farming;
3. Food handling, processing or packing, other than catering services that utilize standard home kitchen equipment;
4. Repair, manufacturing and processing uses; however, this shall not exclude the home occupation of a seamstress where goods are not manufactured for stock, sale or distribution;
5. Restaurants; and
6. Uses which entail the harboring, training, raising or treatment of dogs, cats, birds or other animals on-site.

Sec. 5.12.7. Kennels

- A. Kennels or any outdoor runs shall have a minimum front yard of 200 feet and a minimum side and rear yard of 100 feet.
- B. Outdoor runs shall be visually screened from adjacent properties and public right-of-way with an opaque material, which may include shrubs, walls, fences or berms, and which are a minimum of six feet in height. Where vegetative material is used, said material shall form an opaque screen within two years from the time of first planting.

Sec. 5.12.8. Park Office

Where permitted as an accessory use in the **MHR-8** district, a park office shall be subject to the following standards.

- A. One identification sign per use not exceeding two square feet in area shall be permitted. Pole signs shall not be permitted.

B. The total floor area shall not exceed 30 square feet per lot within the manufactured home park.

Sec. 5.12.9. **Raising of Livestock, Noncommercial**

- A. Where permitted as an accessory use in the S-A district, the raising of livestock, except for chickens as regulated in § 6-8-9(B), for noncommercial purpose shall be subject to the following standards:
1. The lot size shall be two (2) acres or more;
 2. Any structures for the housing of livestock shall be a minimum of 50 feet from any lot line;
 3. Fences or other enclosures shall be provided so as to keep the livestock 50 feet from the lot line.
- B. In the R-R, R-1, R-2, R-3 and R-4 districts, chickens may be raised upon the approval of a temporary Special Use Permit by the Zoning Board of Appeals (ZBA) in compliance with the following minimum regulations:
1. The raising of chickens shall be conducted as an accessory use on the same premises associated with an occupied single-family detached dwelling as the principal use;
 2. The chickens shall be raised for noncommercial purposes;
 3. The number of chickens shall be limited to a maximum of 6;
 4. Roosters shall not be allowed. Breeding of chickens on-site shall not be allowed;
 5. The Special Use Permit shall be limited to the applicant and shall not be transferable;
 6. The raising of the chickens shall be subject to all applicable sanitary, noise and property maintenance regulations, ordinances and laws. Chicken waste shall not be composted or mulched on-site. Chicken waste shall be stored in appropriate containers that do not create any nuisance;
 7. Any odor associated with the raising of the chickens shall not be perceptible beyond the property line of the premises where the chickens are being raised;
 8. The chickens must be kept in coops or in fenced or walled enclosures (chicken run) at all times so constructed that the chickens can not fly over any fence or wall or otherwise escape from the coop or chicken run. The chickens shall not be allowed to roam freely beyond the property lines of the premises associated with the ZBA application;
 9. Feed for the chickens must be stored in secure containers that will not attract rodents, vermin or pests of any type. Unsecured excess feed shall not be allowed;
 10. Chickens shall not be allowed in the front yard between the principal structure and a public or private street;
 11. Chicken coops or other structures for the housing of the chickens, that are established on or after May 1, 2014, shall be located at least fifteen (15) feet from any property line. Chicken coops or other structures for the housing of the chickens, that exist prior to May 1, 2014, shall be located at least three (3) feet from any property line.
 12. The ZBA may require screening of the chicken coop or chicken run as deemed appropriate.

13. The Special Use Permit shall be valid for a maximum of two years. The ZBA may grant approval of the Special Use Permit for a period less than two years. Additional consecutive or non-consecutive Special Use Permits may be granted by the ZBA upon the filing of each new application.
14. The ZBA shall solicit input from property owners within 100 feet of the applicant's property and shall evaluate any complaints that have been received relative to the raising of chickens on the property.
15. Prior to the ZBA hearing for the temporary Special Use Permit, the Building Department shall conduct an inspection of the premises associated with application for the Special Use Permit. The inspection shall note any property maintenance issues and shall include an inspection of the proposed chicken coop (if it exists). The Building Department will provide a report of their findings to the ZBA.

Sec. 5.12.10. **Restaurant**

Where permitted as an accessory use in **Part 3 or Part 4**, a restaurant shall occupy no more than 15 percent of the gross floor area of the principal structure.

Sec. 5.12.11. **Retail Sales and Service**

Where permitted as an accessory use in **Part 3 or Part 4**, retail sales and service shall occupy no more than 15 percent of the gross floor area of the principal structure:

Sec. 5.12.12. **Swimming Pool and Tennis Court**

Where permitted as an accessory use in **Part 3 or Part 4**, limits on maximum building coverage shall not apply to swimming pools or tennis courts. Within a front yard or a required side yard, swimming pools and tennis courts are not permitted, except to the extent permitted for accessory structures in the district.

Sec. 5.12.13. **Dumpsters**

See **§ 7-2-4D**.

Sec. 5.12.14. **Small Wind Energy Systems**

A. **Purpose**

This section is intended to provide standards to promote the safe, effective and efficient use of small wind energy systems designed for home, farm and small commercial use and that are primarily used to reduce the on-site consumption of utility supplied electricity.

B. **Development Standards**

A small wind energy system is permitted in accordance with the district use tables in **Part 3, Part 4 or Part 5**, subject to the following standards.

1. General Standards

- a. A small wind energy system shall be located on a lot a minimum of one acre in size. Only one small wind energy system per lot shall be allowed.
- b. Tower height, measured as the vertical distance from ground level to the tip of the blade at its highest point, shall be a maximum of 65 feet. The allowable height shall be reduced if necessary to comply with all applicable Federal Aviation Administration requirements. The minimum distance between the ground and any part of the rotor blade shall be 30 feet.
- c. The minimum required setback from property lines, overhead utility lines, and the primary structure shall be equal to the total height of the tower and the turbine. No part of the small wind energy system, including guy wire anchors, shall extend closer than ten feet to the property line.
- d. Except during short-term events including utility outages and severe wind storms, the noise level produced by the operation of a small wind energy system shall not exceed 50 decibels, as measured at the site property line.
- e. Exterior lighting on the system shall not be allowed, except that which is specifically required by the Federal Aviation Administration.
- f. Other than appropriate warning signage, a small wind energy system shall not be used as, or used to support, signage. In addition, a small wind energy system shall not be used to support radio, television, or telecommunication equipment.
- g. The system's tower and blades shall remain painted or finished the color originally applied by the manufacturer, typically a non-reflective light gray or light blue color.

2. Safety Standards

- a. Towers with climbing features shall be constructed to provide one of the following means of access control, or other appropriate method of access.
 - i. Tower-climbing apparatus located no closer than 12 feet from the ground.
 - ii. A locked anti-climb device installed on the tower.
 - iii. A locked, protective fence at least six feet in height that encloses the base of the tower.
- b. All ground mounted electrical and control equipment shall be labeled or secured to prevent unauthorized access.
- c. The small wind energy system shall be equipped with manual and automatic over-speed controls.

3. Siting and Installation Standards

- a. A small wind energy system shall be designed and constructed to be in compliance with the applicable provisions of the Uniform Fire Prevention and Building Code and National Electrical Code. Applications for a small wind energy system shall submit the following information:
 - i. Legal property survey;
 - ii. Property lines and physical dimensions of the property;

- iii. Location, dimensions, and types of all existing structures on the property;
 - iv. Location of the proposed small wind energy system and all associated equipment;
 - v. The right-of-way of any public road that is contiguous with the property;
 - vi. Any overhead utility lines and/or buried utility locations;
 - vii. Wind system specifications, including manufacturer and model, rotor diameter, tower height, and tower type;
 - viii. Tower foundation blueprints or drawings;
 - ix. Tower blueprint or drawing;
 - x. Line drawing of electrical components; and
 - xi. Other information as required by the Zoning Enforcement Officer.
- b. No small wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.
 - c. All on-site electrical wires associated with a small wind energy system shall be installed underground, except for "tie-ins" to a public utility company and public utility transmission poles, towers, and lines.

4. Maintenance and Removal

- a. The small wind energy system shall be maintained in good condition. Such maintenance shall include, but not be limited to, painting and structural integrity of the foundation and support structure and security barrier (if applicable).
- b. Any small wind energy system that is found to be unsafe by the Commissioner of Building shall be repaired by the owner or be removed within 120 days. In the event that a small wind energy system is not operational for a period of 6 consecutive months or more, the Town will notify the landowner by registered mail and provide 45 days for a written response. In such a response, the landowner shall set forth reasons for the operational difficulty and provide a reasonable timetable for the corrective action. If the Commissioner of Building deems the timetable for corrective action as unreasonable, the Town shall notify the landowner and such landowner shall remove the small wind energy system and all associated equipment within 120 days.

DIV. 5.13. SOLAR ENERGY

Sec. 5.13.1. Purpose

This Solar Energy Law is adopted to provide provisions for, so far as conditions may permit, the accommodation of solar energy systems and equipment, including:

- A. Taking advantage of a safe, abundant, renewable, and non-polluting energy resource;
- B. Decreasing the cost of energy to the owners of commercial and residential properties, including single-family houses;
- C. Increasing employment and business development in the region by furthering the installation of Solar Energy Systems; and,
- D. Minimizing adverse impacts on neighboring properties through thoughtful design and installation of Solar Energy Systems.

Sec. 5.13.2. Definitions

[Integrate with other definitions?]

BUILDING INTEGRATED SOLAR ENERGY SYSTEM. A combination of photovoltaic and or solar-thermal building components integrated into any building envelope system such as vertical facades including glass and other facade material, semitransparent skylight systems, solar roofing tiles, and shading over windows.

GROUND-MOUNTED SOLAR ENERGY SYSTEM. A Solar Energy System that is anchored to the ground and attached to a pole or other mounting system, detached from any other structure for the primary purpose of producing electricity or thermal energy for onsite consumption.

QUALIFIED SOLAR INSTALLER. A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition.

ROOF-MOUNTED SOLAR ENERGY SYSTEM. A solar panel system located on the roof of any legally permitted building or structure for the purpose of producing electricity or thermal energy for onsite or offsite consumption.

SOLAR COLLECTOR. A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR ENERGY EQUIPMENT. Electrical or thermal energy storage devices, material, hardware, inverters, or other electrical/thermal equipment and conduit of photovoltaic and solar thermal devices associated with the production of electrical or thermal energy.

SOLAR ENERGY SYSTEM. An electrical or thermal generating system composed of a combination of both Solar Panels and Solar Energy Equipment.

SOLAR FACILITY FOOTPRINT. The maximum occupied surface area taken up by the rows of solar panels and the space between the rows (as the panels are laid out at the minimum 0° angle) and including any necessary equipment, access or maintenance roads and pathways.

SOLAR PANEL. A panel designed to absorb solar energy and convert it into electrical or thermal energy.

SOLAR STORAGE BATTERY. A device that stores energy from the sun and makes it available in an electrical form.

SOLAR-THERMAL ENERGY SYSTEMS. Solar energy systems that directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and the heating of pool water.

Sec. 5.13.3. **Applicability**

The requirements of this law shall apply to all solar energy systems installed or modified after its effective date, excluding general maintenance and repair and Building-Integrated Photovoltaic Systems.

Sec. 5.13.4. **General Requirements**

- A. Building permits are required for all solar energy systems.
- B. Qualified Installer. All solar energy systems must be installed by a qualified solar installer and, prior to issuance of a Certificate of Compliance, must be inspected by a Town Building Inspector. In addition, any connection to the public utility grid must be approved by the appropriate public utility.
- C. Storage Batteries. When storage batteries are included as part of the system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Uniform Fire Prevention and Building Code when in use and when no longer used shall be disposed of in accordance with the laws and regulations of Erie County and other applicable laws and regulations.
- D. In the event of inconsistency between the provisions in § 203.6-10 and other provisions in Chapter 203, the provisions in § 203.6-10 shall govern.

Sec. 5.13.5. **Roof-mounted and Building-Integrated Systems**

The following standards are applicable to rooftop and building-mounted photovoltaic and solar-thermal energy systems:

- A. Permitted in all zoning districts.
- B. No size thresholds, except as limited by the applicable edition of the New York State Uniform Fire Prevention and Building Code.
- C. Site plan approval:
 - 1. Site plan approval or modification is not required for changes to or the addition of roof-mounted or building-integrated solar energy systems.

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2. Site plan approval or modification is required for any equipment (i.e. storage batteries) related to roof-mounted or building-integrated solar energy systems that will be located on the ground.
- D. Roof-mounted solar panels facing a public right-of-way (front yard or side yard on a corner lot) must be mounted at the same angle as the roof's surface with a maximum distance of 18 inches between the roof and highest edge of the system.
 - E. Roof-mounted solar energy systems mounted on detached accessory structures (i.e. sheds, covered porches, carports) shall not exceed the maximum height restrictions for accessory structures of the underlying zoning district.
 - F. Glare. Solar energy systems shall be designed and located in order to limit reflective glare within the airport's approach zones, as well as towards roads or any habitable or occupiable building on adjacent properties.
 - G. Safety. No roof-mounted solar-thermal energy system shall be located in a manner that would cause the shedding of ice or snow from the roof into an open porch, stairwell or pedestrian travel area. If no other alternative is available, the Building Commissioner may approve such installation with the addition of necessary safety features, such as snow guards and diverters.

Sec. 5.13.6. **Ground-Mounted Solar Energy Systems**

A. **All Systems**

1. **Height**

The maximum height for all ground-mounted systems is 20 feet when the system is oriented at maximum tilt.

2. **Setbacks**

Ground-mounted solar energy systems shall adhere to the setback requirements as outlined in Section 7B. below.

3. **Siting on the Lot**

All such systems shall be installed in the side or rear yards and shall not be permitted in the front of the building line in any yard facing a public street.

4. **Maintenance**

The owner or operator shall maintain the facility in good condition. Maintenance shall include, but not limited to, structural repairs and integrity of security measures.

5. **Abandonment**

If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the collectors, plates, piping, mounts and associated equipment and facilities by no later than 150 days after the end of the twelve-month period.

B. Size Categories (Tiers) Additional Standards

1. Ground-mounted solar energy systems are divided into three size categories, as follows:
 - a. Tier I ground-mounted solar energy systems have a total facility footprint of 2,000 square feet or less.
 - b. Tier II ground-mounted solar energy systems have a total facility footprint of more than 2,000 square feet and less than 7,000 square feet.
 - c. Tier III ground-mounted solar energy systems have a total facility footprint equal to or greater than 7,000 square feet.
2. Standards applicable to ground-mounted solar energy systems based on scale **size**.

C. Tier I Ground-Mounted Solar Energy Systems **standards:**

1. Permitted in all zoning districts as an accessory use.
2. Setbacks. Ten feet minimum from side and rear yard lot lines.
3. Lot coverage. The footprint of the solar energy system counts towards the total maximum lot coverage as prescribed in the underlying zoning district.
4. Glare. Solar energy systems shall be designed and located in order to limit reflective glare within the airport's approach zones, as well as towards roads or any habitable or occupiable building on adjacent properties.
5. With the exception of a single-family lot, Minor Site plan review required.
6. Screening. Solar energy systems installed on residential land use shall be screened with a minimum of six feet to adjacent residential land uses or a public right-of-way. Screening for non-residential installations shall be required in accordance with § 203.7-2-4C.

D. Tier II Ground-Mounted Solar Energy Systems **standards:**

1. Permitted as an accessory use in the following zoning districts: Rural Residential (RR), Community Facilities (CF), Recreation Conservation (RC), General Business (GB), Motor Service District (MS), Office Building (OB), Planned Residential District (PRD), Planned Development District (PDD), Multifamily Residential District Four-A (MFR-4A), Multifamily Residential District Five (MFR-5), Manufactured Home Residential District Eight (MFR-8).
2. Permitted as a principal or accessory use in the following zoning districts: Suburban Agriculture (SA), General Industrial (GI), Commercial Service (CS), Research and Development (RD), and Science and Technology (ST).
3. Setbacks. Thirty feet minimum from a side or rear lot line.
4. Lot coverage. The footprint of the solar energy system counts towards the total maximum lot coverage as prescribed by the underlying zoning district.
5. Site Plan Review:
 - a. Minor site plan review is required for districts within which the system is considered as an accessory use.

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- b. Major site plan review is required for installations that will be considered the principal use of the property and shall provide the additional application information as required by Subsection 3.e. below.
6. Design Standards:
- a. Fencing. When fencing is installed, barbed wire or similar fence style shall not be utilized.
 - b. Glare. Solar energy systems shall be designed and located in order to limit reflective glare within the airport's approach zones, as well as towards roads or any habitable or occupiable building on adjacent properties.
 - c. Screening. Solar energy systems installed on residential land use shall be screened with a minimum of six feet to adjacent residential land uses. Screening for non-residential installations shall be required in accordance with § 203.7-2-4C.

E. Tier III Ground-Mounted Solar Energy Systems

1. Tier III solar energy systems may be permitted as a Special Use in the following zoning districts: Suburban Agriculture (SA), Office Building (OB), Commercial Service (CS), Research and Development (RD), and Science and Technology (ST); and therefore is subject to the criteria outlined in Town Code § 203.8-6.
2. Setback. Fifty feet minimum from any lot line. Roads, landscaping and fencing may occur within the setback.
3. Maximum foot print and lot coverage. The maximum solar facility footprint is 10 acres. The footprint of the solar energy system counts towards the total maximum lot coverage as prescribed by the underlying zoning district. Solar facilities located on contiguous or non-contiguous parcels under the same solar facility ownership or operator will be counted together towards maximum footprint calculations.
4. A Special Use Permit approved by the Town Board is required prior to construction, installation or modification. In addition to Special Use Permit application requirements (§ 203.8-6), the following additional information shall be submitted as part of the application:
 - a. Ownership and Access. If the property of the proposed project is to be leased, legal consent between all parties, specifying the use(s) of the land for the duration of the project, including easements and other agreements for use and access.
 - b. Site Plans. Site plans showing the layout of the solar energy systems, including all solar panels, significant components and equipment, mounting systems, and other important site features as required by the Subsection f) Design Standards below. Site plans must be signed by a Professional Engineer or Registered Architect.
 - c. Utility notification. Submission of documentation from the utility company that operates the electrical grid where the installation is to be located acknowledging the photovoltaic solar energy systems will be connected to the utility grid. Off-grid systems shall be exempt from this requirement.
 - d. Safety. The owner/operator shall provide evidence that a copy of the site plan application has been submitted to the appropriate Fire Safety Division. All means of shutting down the

- photovoltaic solar energy system shall be clearly marked on the site plan and building permit applications.
- e. Operation and Maintenance. Submission of a plan for the operation and maintenance of the facility, to include measures for maintaining safe access, operational maintenance of the solar energy system, and general property upkeep, such as mowing and trimming.
 - f. Airport Approach Zone. Tier III ground-mounted solar energy systems within the airport's approach zone must receive clearance from the Buffalo Niagara International Airport that the planned facility will not create a flight safety issue due to reflective glare.
 - g. Decommissioning Plan. Submission of a decommissioning plan, to be implemented upon abandonment, or cessation of activity, or in conjunction with removal of the facility to ensure that the site is restored to its original state. Decommissioning cost estimates shall be prepared by a professional engineer or licensed contractor, and take into account inflation. Proof of sufficient decommissioning funds shall be required prior to issuance of a permit. Compliance with this plan shall be made a condition of the issuance of a special use permit.
5. Major site plan review is required for all Tier III solar energy systems and shall provide the additional application information as required by Subsection 3.d. above.
6. Design Standards.
- a. Fencing. When fencing is installed, barbed wire or a similar style fencing shall not be utilized. Fencing may be further screened by landscaping needed to avoid adverse aesthetic impacts.
 - b. Glare. Photovoltaic solar energy systems shall be designed to minimize reflective glare toward roads and any inhabited building on adjacent properties.
 - c. Screening/Buffering. Based on site-specific conditions, including topography, adjacent structures, and roadways, reasonable efforts shall be made to minimize visual impacts by preserving natural vegetation, creating berms, and providing landscape screening to abutting properties and roads, but should not result in shading solar energy systems. Screening shall be required in accordance with § 203.7-2-4C.
 - d. Lighting. All lighting on the site related to the solar energy system shall comply with the Town's Site Lighting Standards § 203.7-3 and be limited to that required for safety and operational purposes.
 - e. Signage. All signage shall comply with the Town's Sign Regulations § 203.7-8. A sign shall be displayed on or near the main access point identifying the owner and providing a twenty-four-hour emergency contact phone number.
 - f. Utility Connections. Reasonable efforts shall be made to place all utility lines from the photovoltaic solar energy system underground, depending on appropriate soil conditions, shape and topography of the site, financial feasibility, and any requirements of the utility provider.
7. Decommissioning.

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- a. If a solar energy system ceases to perform its originally intended function for more than 12 consecutive months, the owner and/or operator shall implement the decommissioning plan, to include, but not be limited to:
 - i. Removal of above-ground and below-ground equipment, structures and foundations.
 - ii. Restoration of the surface grade and soil after removal of equipment.
 - iii. Revegetation of restored soil areas with native seed mixes, excluding any invasive species.
- b. If the owner and/or operator fail to fully implement the decommissioning plan within 180 days, then in addition to other remedies provided by this section or chapter, by New York Town Law § 268, or by law or equity, the Town may remove the solar energy system and restore the property according to the decommissioning plan and impose a lien on the property to cover these costs to the municipality.

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[Reserved]

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DIV. 6.1. **PARKING, LOADING, STACKING**

Sec. 6.1.1. **Purpose**

Off-street parking, loading and stacking requirements and regulations are established in order to achieve the following purposes:

- A. To relieve congestion so that streets can be utilized more fully for movement of vehicular traffic;
- B. To promote the safety and convenience of pedestrians and shoppers by locating parking areas so as to lessen car movements in the vicinity of intensive pedestrian traffic;
- C. To protect adjoining residential neighborhoods from on-street parking;
- D. To promote the general convenience, welfare and prosperity of business, service, research, production and manufacturing developments which depend upon off-street parking facilities;
- E. To insure that parking facilities are designed with careful regard to orderly arrangement, topography, landscaping and ease of access and developed as an integral part of an overall site design; and
- F. To provide regulations and standards for the development of off-street parking, loading and stacking facilities in accordance with the objectives of the Comprehensive Plan.

Sec. 6.1.2. **Scope of Regulations**

Off-street parking, loading and stacking facilities shall be provided as a condition precedent to occupancy of all buildings:

- 1. Whenever a new building is constructed or new use established;
- 2. Whenever an existing building is altered and there is an increase in the number of building units, seating capacity or floor area of the building; and
- 3. Whenever an existing building is changed to a more intensive use requiring more off-street parking, loading or stacking facilities.

Sec. 6.1.3. **Continuation of Facilities**

Off-street parking, loading and stacking facilities in existence on May 23, 2006 and those required shall be continued and maintained in operation and shall not be reduced below the requirements of this Ordinance during the period that the principal use is maintained, unless an equivalent number of spaces shall be provided for said use in another location. The Zoning Enforcement Officer shall review the provision of parking spaces, however the parking lot itself shall be reviewed in accordance with § 8-7.

Sec. 6.1.4. **Rules for Computing Requirements**

A. **Fractional Requirements**

When units of measurement used in computing the number of required off-street parking, loading and stacking spaces result in the requirements of a fractional space, the nearest whole number of off-street parking spaces shall be required.

B. Employees

Whenever parking requirements are based on the number of employees, it shall mean the maximum number of employees on duty on the premises at one time or any two successive shifts, whichever is greater.

C. Net Floor Area

For the purpose of calculating the minimum requirements for off-street parking, net floor area shall be calculated according to the following:

1. For a single story, single tenant building – 90 percent of gross floor area.
2. For a multistory, single tenant building – 80 percent of gross floor area.
3. For a single story, multiple tenant building – 85 percent of gross floor area.
4. For a multistory, multiple tenant building – 75 percent of gross floor area.

D. Seating Capacity

The number of seating units installed or indicated on the plans, in restaurants and areas devoted to dining, shall not be less than one unit per 15 square feet of floor area; where units are not indicated on the plan, it shall be assumed that seating units will be provided at a ratio of one for each 10 square feet of floor area. Floor area constitutes the actual area of the assembly space not including accessory unoccupied space nor the thickness of walls.

E. Parking for Single- and Multi-Use Buildings or Sites

1. A building occupied by one use shall provide the off-street parking spaces as required for the specific use. A building or group of buildings occupied by two or more uses, operating normally during the same hours, shall provide spaces for not less than the sum of the spaces required for each use.
2. For a shopping center, parking spaces shall be provided for the total net floor area of the building or buildings as set forth in the Schedule of Parking Requirements below, instead of the requirements based on each separate use.

F. Unlisted Uses

Upon receiving a development permit application for a use not specifically listed in the Schedule of Parking Requirements, the Zoning Enforcement Officer shall apply the off-street parking standard specified for the listed use that is deemed most similar to the proposed use or require a parking study in accordance with § 7-1-7, Alternative Parking Plan.

G. No Reduction Below Requirement

Existing parking and loading spaces may not be reduced below the requirements established in this Section without approval of an Alternative Parking Plan by the Zoning Enforcement Officer. Any change in use that increases applicable off-street parking or loading requirements will be deemed a violation of this Code unless parking and loading spaces are provided in accordance with the provisions of this Section.

Sec. 6.1.5. Schedule of Parking Requirements

A. Minimum Parking Requirements

Off-street parking facilities **must shall** be provided in quantities not less than set forth in the following schedule.

SCHEDULE OF PARKING REQUIREMENTS	
OPEN USES	
Agricultural use	1 per 2 employees on maximum shift
Resource extraction	1 per 2 employees on maximum shift
RESIDENTIAL USES	
Required Parking Spaces	
Attached dwelling	2 per dwelling unit
Dormitory, fraternity, sorority house	1 per 2 occupants
Manufactured home	2 per dwelling unit
Single-family detached dwelling	2 per dwelling unit, plus 1 per auxiliary unit
Two-family	2 per dwelling unit
PUBLIC AND CIVIC USES	
Adult care facility	1 per employee, plus 1 per 3 units
Auditoriums, gymnasiums, theaters, public assembly not otherwise listed	1 per 3 seats or per 3 persons of posted capacity if permanent seats are not installed
Boardinghouse	1 per employee, plus 1 per bed
Cemetery, columbaria, mausoleum, memorial park	1 per 50 internment plots
Community residential facility, group home	1 per employee (minimum of 2 spaces for community residences and 5 for intermediate care facility), plus 2 per facility vehicles, plus 1 per client vehicle, plus 4 visitor spaces
Community service	1 per 200 sf
Convalescent or nursing home, dwellings for elderly persons (65 or older)	1 per 3 beds, plus 1 per employee
Day care center, child	1 per employee plus 1 per 8 persons of licensed capacity
Hospital	1 per bed, including emergency room and ambulatory surgery, plus 1 per employee
Medical office or medical facility not otherwise listed	1 per 150 sf
Parks or open space not otherwise listed	2 per acre, plus 1 per 250 sf of park building
Passenger terminal	1 per 300 sf
Place of worship	1 per 3 seats or per 3 persons of posted capacity if permanent seats are not installed
Public and semi-public buildings	1 per 200 sf floor area devoted to office use
School, nursery or primary	2 per classroom or as required for assembly areas, whichever is higher
School, post-secondary	1 per 2 classroom seats, plus spaces required for assembly area
School, secondary	1 per classroom, plus spaces required for assembly area

Social service institution	1 per 2 employees on maximum shift, plus 1 per 3 beds
Taxi dispatch center	1 per employee, plus 2 visitor spaces
Telecommunication facility	1 per service vehicle
Utility, minor	None
Utility not otherwise listed	1 per facility, plus 1 per 250 sf, plus 1 per fleet vehicle
COMMERCIAL USES	
Athletic, swim or health club	1 per 2 persons of posted maximum capacity
Bowling alley	6 spaces per alley
Call center	1 per 100 sf
Car wash	1 space per 3 employees on maximum shift, plus 3 spaces per stall
Conservation, archery and gun clubs	Minimum 10 spaces
Dance, art, music or photo studio or classroom	1 per 75 sf of gross floor area devoted to activity
Funeral home or mortuary	20 per parlor
Go-cart track	2 per cart plus 1 per 60 sf of waiting area
Golf course	3 per hole, minimum 10 spaces
Golf driving range	1 per driving stall, plus spaces as required for retail activities
Hair, tanning, and other personal care services	2 per chair or operating station
Hotels, motels, tourist houses	1 space per room, plus 1 per 6 seats in restaurant/bar area, plus 1 per 5 persons of posted capacity in conference or meeting room
Indoor recreation not otherwise listed	1 per 250 sf of floor area devoted to activity, plus 1 per 3 seats or 3 persons of posted capacity if there are no seats
Miniature golf	1 per hole, plus spaces required for assembly space
Office, professional or not otherwise listed	1 per 200 sf of net floor area
Outdoor recreation fields (Football, soccer, baseball, bocce ball, etc.)	1 per 3 seats or per 3 recreation participants
Parking, commercial	1 space per employee on the maximum shift
Restaurant, take-out only	1 per 10 sf of take-out floor area
Restaurant, bar, banquet hall, and dining area	1 per 3 seats, plus 1 per 100 sf for customer area or takeout
Retail sales and service not otherwise listed, not exceeding 2,000 square feet	7 per 1,000 sf of net floor area, minimum 5 spaces
Retail sales and service not otherwise listed, over 2,000 but less than 25,000 square feet	5.5 per 1,000 sf of net floor area
Shopping center and retail sales and service not otherwise listed (25,000 to 200,000 square feet)	5 per 1,000 sf of net floor area, plus 1 per 5 seats in sit-down restaurants and theaters
Shopping center and retail sales and service not otherwise listed (200,000 to 600,000 square feet)	5 per 1,000 sf of net floor area, plus 1 per 5 seats in theaters
Shopping center and retail sales and service not otherwise listed (over 600,000 square feet)	5.5 per 1,000 sf of net floor area
Swimming pool, club or spa	1 per 50 sf of gross floor area and pool area devoted to activity

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Tennis club	3 per court
Self-service storage	1 per 5,000 sf of area devoted to storage
Vehicle repair	5 spaces per bay plus 1 space per employee
Vehicles sales or rental	2 per 300 sf of gross floor area plus 1 per 2 employees on maximum shift
Vehicle service, limited (Automobile collision and repair shop)	2 spaces per bay, rack, stall or pit with a minimum of 6 spaces
Vehicle sales and service not otherwise listed	1 per employee, plus 1 per 200 sf
INDUSTRIAL USES	
Automobile junkyard	1 space per 2 employees on the maximum shift plus 10 spaces for customer parking
Industrial, heavy	1 space per employee
Industrial service, light	1 space per employee
Warehouse and storage occupancies	1 per 1,000 sf of gross floor area or 1 space per employee, whichever is greater
Waste-related service not otherwise listed	1 space per 2 employees plus 1 space per vehicle used in operation
Wholesale trade	1 space per employee

B. Alternative Parking Plan

An alternative parking standard may be approved by the Zoning Enforcement Officer for specific developments or uses that are deemed to require a different amount of parking than the standards shown in the Schedule of Parking Requirements. The Zoning Enforcement Officer shall establish conditions necessary to assure the adequacy of future on site parking when approving an alternate parking standard. Potential alternative parking plan approaches and specific regulations are described below. In the event that the Zoning Enforcement Officer determines that one of the following alternative approaches produces an inadequate number of parking spaces, the Zoning Enforcement Officer may require the provision of additional parking or may limit the occupancy of the subject building to the extent that the existing number of parking spaces is adequate. The Zoning Enforcement Officer shall have the authority to require a revised study and analysis should conditions change that may result in a change in site parking conditions.

1. Parking Study Option

Parking studies may be required for specific uses that have characteristics that reduce the accuracy of standard requirements. Additionally, as an alternative, petitioners for uses that appear on the requirements table may choose to conduct a parking study to determine appropriate parking requirements. Many uses have widely varying parking demand characteristics, making it difficult to specify a single off-street parking standard. This option is intended to allow development to meet vehicle parking and transportation access needs by means other than providing parking spaces on-site in accordance with the Schedule of Parking Requirements.

a. Parking Study

A petitioner may submit a parking study that provides justification for the number of off-street parking spaces proposed in a new development or expanded use if the proposed number does not meet the requirements of the Schedule of Parking Requirements above.

A parking study shall include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Zoning Enforcement Officer, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study shall document the source of data used to develop the recommendations.

b. Eligible Alternatives

A number of specific parking and access alternatives may be considered, including off-site, shared or valet parking or the proximity of public transportation. The Zoning Enforcement Officer shall be authorized to consider and approve any alternative to providing off-street parking spaces on the site of the subject development if the petitioner demonstrates to the satisfaction of the Zoning Enforcement Officer that the proposed plan shall result in an equivalent or better situation with respect to surrounding neighborhoods, town-wide traffic circulation or urban design than would strict compliance with otherwise applicable off-street parking standards.

c. Review by Zoning Enforcement Officer

The Zoning Enforcement Officer shall review the parking study and any other traffic engineering and planning data relevant to the establishment of an appropriate off-street parking standard for the proposed use. After reviewing the parking study, the Zoning Enforcement Officer shall establish a minimum off-street parking standard for the proposed use.

2. Off-Site Parking

Off-street parking spaces may be located on a separate lot from the lot on which the principal use is located if approved by the Zoning Enforcement Officer and if the off-site parking complies with the all of following standards.

a. Ineligible Activities

Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking) or convenience stores. Required parking spaces reserved for persons with disabilities shall not be located off-site.

b. Location

No off-site parking space may be located more than 500 feet from the primary entrance of the use served unless shuttle bus service is provided to the remote parking area. Off-site parking may not be separated from the use that it serves by a street right-of-way with a width of more than 80 feet, unless a grade-separated pedestrian walkway is provided, or other traffic control or shuttle bus service is provided to the remote parking area. The noncontiguous lot shall contain an allowable principal use for the zoning district in which it is located.

c. Zoning Classification

Off-site parking areas serving uses located in nonresidential zoning districts shall be located in nonresidential zoning districts, except for restricted parking lots per § 7-1-9B(2)(b). Off-site parking areas serving uses located in residential zoning districts may be located in residential or nonresidential zoning districts.

d. Agreement for Off-Site Parking

In the event that an off-site parking area is not under the same ownership as the principal use served, a written agreement will be required. An attested copy of the agreement between the owners of record shall be submitted to the Zoning Enforcement Officer for recordation on forms acceptable to the Zoning Enforcement Officer. Recordation of the agreement with the Erie County Clerk's Office shall take place before issuance of a building permit for any use to be served by the off-site parking area. The agreement shall run with the land until terminated with the approval of the Zoning Enforcement Officer. An off-site parking agreement may be revoked only if all required off-street parking spaces will be provided in accordance with this Section.

3. Shared Use of Parking Facilities

A nonresidential use may make arrangements with another nonresidential use that normally has different hours of operation to share off-street parking spaces if approved by the Zoning Enforcement Officer. The shared parking shall comply with all of following standards.

a. Location

Shared parking facilities shall be located within 500 feet from the primary entrance of all uses served.

b. Zoning Classification

Shared parking areas serving uses located in nonresidential zoning districts shall be located in nonresidential zoning districts, except for restricted parking lots per § 7-1-9B(2)(b). Shared parking areas serving uses located in residential zoning districts may be located in residential or nonresidential zoning districts.

c. Shared Parking Study

Those wishing to use shared parking as a means of satisfying off-street parking requirements shall submit a shared parking analysis to the Zoning Enforcement Officer that clearly demonstrates the feasibility of shared parking. The study shall be provided in a format acceptable to the Zoning Enforcement Officer. It shall address, at a minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

d. Agreement for Shared Parking

A shared parking plan shall be enforced through written agreement among the owners of record. An attested copy of the agreement shall be submitted to the Zoning Enforcement Officer for recordation on forms acceptable to the Zoning Enforcement Officer. Proof of recordation of the agreement with the Erie County Clerk's Office shall be presented to the Zoning Enforcement Officer prior to issuance of a Building Permit. A shared parking agreement may be revoked by the parties to the agreement only if off-street parking is provided pursuant to this Section. Should any of the uses be changed or the facilities discontinued, then the required spaces for the remaining use(s) shall be provided elsewhere as a condition precedent to the continuation of the subject use(s).

4. Valet Parking

The Zoning Enforcement Officer may authorize valet parking as a means of satisfying otherwise applicable off-street parking standards, provided that the following conditions are met:

- a. An automobile shall be retrievable from its parking space with the movement of a maximum of two additional vehicles;
- b. An equivalent number of valet spaces shall be available to replace the required parking spaces. Such valet spaces do not require individual striping, and may take into account the tandem or mass parking of vehicles. All valet parking areas shall meet the applicable requirements of § 7-2, Landscaping, Buffers and Screening.
- c. Valet parking drop-off locations shall meet the requirements of § 7-1-10, Vehicle Stacking Areas.

5. Transportation Management Plan

The Zoning Enforcement Officer may authorize a reduction in the number of required off-street parking spaces for developments or uses that institute and commit to maintaining a transportation management program, in accordance with the standards of this Section.

a. Required Study

The petitioner shall submit a study to the Zoning Enforcement Officer that clearly indicates the types of transportation management activities and measures proposed. The study shall be provided in a format acceptable to the Zoning Enforcement Officer.

b. Transportation Management Activities

There shall be no limitation on the types of transportation management activities for which reductions may be granted from otherwise required off-street parking ratios. The following measures shall serve as a guide to eligible transportation management activities.

- i. Transportation Coordinator. The occupant of the development or use may appoint an employee to act as Transportation Coordinator with responsibility for disseminating information on ride-sharing and other transportation options may be cause for a reduction in otherwise applicable off-street parking requirements. In addition to acting

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- as liaisons, Transportation Coordinators shall be available to attend meetings and training sessions with the Town or transit providers.
- ii. Off-Peak Work Hours. Employers that institute off-peak work schedules, allowing employees to arrive at times other than the peak morning commute period, may be eligible for a reduction in otherwise applicable off-street parking requirements. The peak morning commute period is defined as 7:00-9:00 a.m.
 - iii. Preferential Parking. The provision of specially marked spaces for each registered car pool and van pool may be cause for a reduction in otherwise applicable off-street parking requirements.
 - iv. Financial Incentives. The provision of cash or in-kind financial incentives for employees commuting by car pool, van pool and transit may be cause for a reduction in otherwise applicable parking requirements.

Sec. 6.1.6. **Parking, Stacking and Loading Area Design Requirements**

Parking, stacking and loading areas and access driveways shall be designed, graded, constructed, altered and maintained as follows:

A. **Grading and Paving**

Parking, stacking and loading areas and access driveways shall be graded and drained so that the surface water shall not be allowed to flow onto adjacent properties. Parking areas and driveways shall be constructed as required by the Building Construction Administration Code.

B. **Features**

Parking, stacking and loading areas shall be arranged, marked and maintained as shown on the parking, loading and stacking plan approved as a part of the site plan in order to provide for orderly and safe parking, loading and storage of vehicles. The Planning Board may also require structural or landscape features, including, without limitation, bumper guards, curbs, walls or fences, to provide protection of property and persons and privacy and screening for adjacent land uses with visual, noise and air standards considered. A compact evergreen hedge, shrubs or other screening by a substantially solid fence between parking areas and the side or rear lot line of a residential district may also be required in accordance with the standards established in § 7-2.

C. **Illumination**

Parking, loading and stacking areas shall be illuminated only to the extent necessary to insure the public safety and in accordance with § 7-3, Site Lighting.

D. **Pedestrian Walks**

Pedestrian walks between parking areas and buildings shall be provided to assure pedestrians' safety.

E. **Driveways to Parking, Loading and Stacking Areas**

Entrance and exit driveways serving parking, loading and stacking facilities, drive-in businesses, fee parking lots and public parking lots shall be provided in location, size and number so as to interfere

as little as possible with the use of adjacent property and the flow of traffic on the streets to which they connect. Driveways located in nonresidential districts shall be located at least 10 feet from any residential zoning district.

Sec. 6.1.7. **Off-Street Parking Space and Parking Lot Design**

A. **Parking Space Dimensions**

1. Required off-street parking spaces shall have minimum dimensions of 9 feet in width by 19 feet in length. Parallel parking spaces shall have minimum dimensions of 9 feet by 22 feet.
2. Minimum aisle width shall be as follows:

PARKING ANGLE	ANGLE OF PARKING	
	ONE WAY	TWO WAY
Parallel	13'	24'
30 degrees	13'	24'
45 degrees	13'	24'
60 degrees	18'	24'
90 degrees	24'	24'

B. **Parking Area Location**

1. **Residential Districts and Uses**

Enclosed or open parking facilities, as required, shall be provided on the same lot as the dwelling unit served.

2. **Business and Industrial Districts**

a. **General**

Except for as provided in § 6-1-7C above, in all nonresidential districts, off-street parking, loading and stacking facilities shall be provided on the same lot as the principal use or on another nonresidentially zoned lot, the nearest point of which shall be within 200 feet from the nearest point of the building served or on another noncontiguous nonresidentially zoned lot when approved by the ZBA and located on a street classified as a major or minor arterial. The noncontiguous lot must contain an established allowable principal use for the zoning district in which it is located.

b. **Restricted Parking Lots Permitted Only in R-3, R-4, MFR-5 and MFR-6 Districts**

If the ZBA, after notice and public hearing in accordance with § 8-2-3 and after receiving a recommendation from the Planning Board, finds that the proposed parking, loading or stacking area in an R-3, R-4, MFR-5 and MFR-6 district to be accessory to a business use, it may authorize the Zoning Enforcement Officer to issue a permit for the parking, loading or stacking area in such residential districts, provided that the proposed parking, loading and stacking area:

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- i. Will not increase the congestion on adjoining residential streets in such a way as to promote a traffic hazard or a nuisance to adjoining residents;
- ii. Will be properly screened, lighted and designed so as to prevent nuisance to adjoining residents;
- iii. Will be landscaped as required by this Ordinance;
- iv. Will be suitable for the proposed use;
- v. Shall not provide more than 25 percent of the required parking, loading and stacking area;
- vi. At least 100 feet of said lot shall abut or be directly across the street or alley from the business use to which it is accessory;
- vii. Shall not extend more than 250 feet from the nearest property line of the business district;
- viii. Shall be used for the purpose of passenger automobiles only, and no commercial repairs, sales or services shall be conducted thereon; and
- ix. Shall be designed and constructed with driveways and parking areas that are located not less than 10 feet from any adjacent residential lot line.

c. Parking Rooms

Parking serving development over 100,000 square feet of gross floor area shall be visually and functionally segmented into several smaller parking areas. Each smaller parking area shall be approximately 180 or fewer parking spaces; the actual number of spaces required will be determined by the Zoning Enforcement Officer. Each smaller parking room shall be connected to an internal system of roadways. Outparcel and parking room access shall be taken from the internal system of roadways on the site.

d. Parking Lot Walkways

Parking Lot Pedestrian Medians with walkways leading to primary building entrances as designated by the Zoning Enforcement Officer may be required by the Planning Board in parking lots containing more than 180 spaces in accordance with § 7-2-3A(3)(h).

Sec. 6.1.8. **Vehicular Stacking Design Requirements**

A. **Minimum Stacking Requirements**

In addition to minimum parking requirements established by § 7-1-6A above, the following stacking areas are required. The Zoning Enforcement Officer may require an analysis of stacking requirements be provided to determine if additional stacking spaces will be required for a specific use or location. The size of each stacking space shall be 20 feet in length by 9 feet in width.

SPECIFIC USE	STACKING SPACES (MIN)	MEASURED FROM
Automated teller machine	3	Machine
Bank teller lane	4	Teller window
Car Wash, Coin	5 per stall	Entrance
Car Wash, Rapid	35 per stall	
Drive-In Photo Facilities	2 per service window	Service window
Gasoline pump island	2	Pump island
Restaurant, drive-through	6	
Order box	4	Order box to pick-up window
Other Drive-In Facilities	5, or as determined by Zoning Enforcement Officer	

B. **Location**

Stacking spaces may not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

C. **Design**

Stacking spaces shall be separated from other internal driveways by raised medians if deemed necessary by the Zoning Enforcement Officer for traffic movement and safety.

Sec. 6.1.9. **Loading Facility Design Requirements**

Loading and unloading facilities shall be provided and maintained as long as such building is occupied or unless equivalent facilities are provided in conformance with the regulations of this Section.

A. **Allocation of Use**

Space required and allocated for any off-street loading facility shall not be used to satisfy the space requirements for off-street parking or stacking. An off-street loading space shall not be used for repairing or servicing of motor vehicles.

B. **Location of Facility**

All required loading facilities shall be related to the building and use to be served to provide for loading and off loading of delivery and other service vehicles and shall be so arranged that they may be used without blocking or otherwise interfering with the use of accessways, parking or stacking facilities, public streets or sidewalks. A required loading space shall not face or be visible from the frontage street and shall not be located in a required front yard or a required side or rear yard if adjoining a residential district.

C. Access Driveways

Each required off-street loading space shall be designed for vehicular access by means of a driveway or driveways to a public street in a manner which will least interfere with adjacent traffic movements and interior circulation.

D. Minimum Size Criteria

A required off-street loading space shall be at least 12 feet wide by at least 20 feet in length. The above area shall be exclusive of the maneuvering space, and each loading facility shall have a vertical clearance of at least 14 feet.

E. Schedule of Required Loading Facilities

Off-street loading spaces shall be provided as required below.

Use	Number of Loading Spaces
Retail Sales and Service	
Under 5,000 SF	none
5,000 – 50,000 SF	1
50,000 – 100,000 SF	2
Each additional 100,000 SF	1 additional space
Printing, warehouse and storage establishments	
Under 40,000	2
40,000 – 100,000	4
Each additional 50,000	1 additional space
Industrial	
Under 20,000	2
20,000 – 40,000	4
Each additional 25,000	1 additional space

F. Unlisted Uses

Any use not listed in § 7-1-11E may provide any number of loading spaces provided that such spaces are constructed in accordance with the standards of this subsection.

Sec. 6.1.10. Parking and Storage on Residential Parcels

- A. Parking or storage of any vehicle or trailer being used for commercial purposes shall not be permitted on a residential parcel, except that one commercial vehicle, the rated capacity of which does not exceed 3/4-ton, may be parked inside or outside of a completely enclosed building. When parked outside of a completely enclosed building, the commercial vehicle shall not have any commercial advertisement affixed thereto.
- B. In the S-A district, commercial vehicles shall be allowed only when directly associated with permitted principal uses on the same premises.

DIV. 6.2. LANDSCAPE, BUFFERS, SCREENING

Sec. 6.2.1. Purpose

It is the purpose of this Section to:

- A. Protect and promote the public health, safety and general welfare by requiring the landscaping of all applicable development meeting the criteria in § 8-7-1 including parking, stacking and loading areas (Vehicle Use Areas).
- B. Establish minimum standards and criteria for the landscaping of all applicable development to dissuade the unnecessary clearing and disturbing of land so as to preserve the natural and existing growth of vegetation and to replace removed vegetation or plant new vegetation indigenous to the Western New York region.
- C. Reduce the effects of wind and air turbulence, heat and noise, and the glare of motor vehicle lights and parking area lights.
- D. Provide unpaved areas for the absorption of surface waters.
- E. Reduce the level of carbon dioxide and airborne pollutants and return oxygen to the atmosphere.
- F. Prevent soil erosion.
- G. Provide shade.
- H. Conserve and stabilize property values and to otherwise facilitate the creation of a convenient, attractive and harmonious community.
- I. Relieve the blighted appearance of parking areas.
- J. Generally preserve a healthful and pleasant environment.
- K. Implement the policies of the Comprehensive Plan.

Sec. 6.2.2. General Provisions

- A. All developments subject to site plan review in accordance with § 8-7 shall meet the requirements of this Section. A separate landscape plan shall be submitted and approved, approved with conditions or denied as a part of this review procedure.
- B. The landscape plan shall be prepared by a licensed landscape architect unless the landscape plan is submitted as part of a minor site plan as defined in § 8-7. The contents of the landscaping plan shall be established by the Zoning Enforcement Officer.
- C. A revised site plan shall not diminish the landscaping of the site below the requirements of this section.

Sec. 6.2.3. Landscape Regulations

A. Standards and Criteria

1. General Requirements

- a. Required landscaped areas shall be designed as an integral part of the site development and shall be dispersed throughout the development site and VUA.
- b. Landscaping shall provide screening for adjacent land uses in accordance with § 7-2-4 below, with visual, noise and air quality factors considered.
- c. Vegetation shall be compatible with soil conditions on the development site and the regional climate.
- d. Existing and natural features and vegetation shall be preserved and incorporated in the landscaped area wherever possible.
- e. The primary emphasis of the landscape treatment shall be on trees. Shrubbery, hedges, grass and other vegetation may be used to complement the use of trees but shall not be the sole contribution to the landscape treatment.
- f. Plastic or other types of artificial plantings or vegetation shall not be permitted.
- g. All large and small deciduous trees planted shall have a minimum caliper of two and one-half inches, measured six inches above the ground. All large deciduous trees planted in multi-stem form shall have a minimum height of 12 feet above the finished grade. All small deciduous trees planted in multi-stem form shall have a minimum height of 10 feet above the finished grade. All coniferous trees planted shall have a minimum height of five feet above the finished grade. All ornamental trees planted shall have a minimum caliper of one and three-quarters inches measured six inches above the ground. All ornamental trees planted in multi-stem form shall have a minimum height of eight feet above the finished grade. All shrubs planted shall have a minimum height of 24 inches above the ground except when being used as a ground cover. All evergreen shrubs used for screening shall have a minimum height of 48 inches (4 feet) above the finished grade.

2. Required Landscaped Area Adjacent to Buildings

- a. A landscaped area with a minimum average width of three feet shall be provided between each and every side of the proposed principal use building and any off-street parking or internal access road with the exception of building entrances/exits, drive-throughs and covered pedestrian walkways. A minimum of 50 percent of this landscaped area shall be planted with small trees, shrubs, perennials or combinations thereof. The balance of the landscaped area not planted with trees, shrubs or perennials shall be lawn or groundcover (see subsection (3) below).
- b. Where the side or rear facade of a principal building or accessory structure faces a public or private street/right-of-way, the entire area of the required yard (with the exception of building entrances/exits and loading areas) between the street/right-of-way and the building shall be landscaped with a combination of evergreen and deciduous trees, shrubs and perennial plants

sufficient to mitigate the visual impact of the building on the adjacent street/right-of-way as determined by the Planning Board or Zoning Enforcement Officer, as applicable.

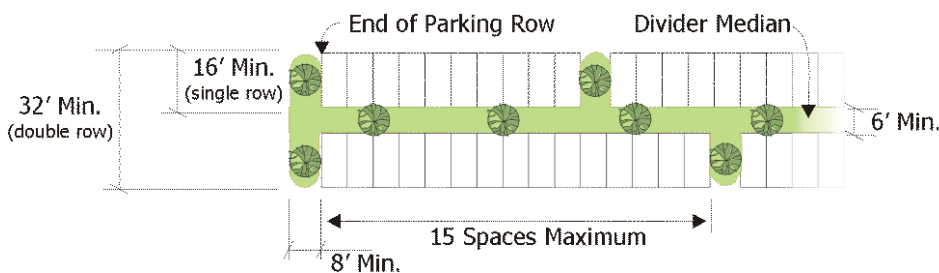
3. Interior Landscaped Area

- a. Minimum interior landscaped areas shall be provided in accordance with the following table.

PARKING AREA	INTERIOR LANDSCAPED AREA (MIN PERCENT OF PARKING AREA)
0 to 2,999 SF	0%
3,000 to 7,500 SF	5%*
7,501 to 43,560 SF	5%
Over 43,560 SF (1 acre)	10%

* For Parking Areas of 7,500 square feet or less, where the configuration of the site permits, yard area at least 5 feet wide in excess of the minimum required yard in the district shall be credited to the interior landscaped area requirement

- b. An interior landscaped island shall be provided for every 15 spaces. Each island shall have a minimum width of eight feet inside the curb and a minimum length of 16 feet for a single row and 32 feet for a double row. Interior islands may be consolidated or intervals may be expanded in order to preserve existing trees or facilitate snow plowing if approved by the Planning Board or Zoning Enforcement Officer, as applicable.
- c. All rows of spaces shall terminate in a landscaped island. Each island shall conform to the specifications described in (b) above. Terminal island intervals may be modified in order to preserve existing trees or facilitate snow plowing if approved by the Planning Board or Zoning Enforcement Officer, as applicable.
- d. Divider medians may be substituted for landscaped islands described in (b) above. Divider medians are landscaped areas located between rows of parking spaces, between parking spaces and driveways or between areas of parking. Divider medians shall have a minimum width of six feet.



- e. A minimum of one large deciduous tree shall be provided for each landscaped island that exceeds 128 square feet. One additional large deciduous shade tree shall be provided within landscaped islands for each 100 square feet in excess of 128 square feet. The Planning Board or Zoning Enforcement Officer may, permit the substitution of smaller ornamental trees within landscaped islands. A minimum of 2 small ornamental trees shall be provided for each

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landscaped island that exceeds 128 square feet. One additional small ornamental tree shall be provided within landscaped islands for each 90 square feet in excess of 128 square feet.

- f. A minimum of one large deciduous shade tree shall be planted for every 200 square feet of landscaped area within any divider median, planted individually or in groups separated by a maximum of 40 feet. The Planning Board or Zoning Enforcement Officer may, permit the substitution of smaller ornamental trees within divider medians. A minimum of one small ornamental tree shall be provided for every 90 square feet of landscaped area within any divider median.
- g. When divider medians and mid row islands have a width of 10 feet or greater, evergreen trees may be provided in addition to large deciduous trees. Evergreen trees should be spaced a maximum of 10 feet on center.
- h. Parking Lot Pedestrian Medians (as required by § 7-1-9D) shall have a minimum dimension of 16 feet and contain a concrete walkway with a minimum width of six feet. Planting areas with a minimum width of five feet shall be provided on both sides of the walkway. At each point the walkway crosses a parking lot or internal driveway, the walkway shall be clearly defined through a change in the texture, color or height of the paving materials.
- i. In addition to trees, all landscaped islands and divider medians shall be landscaped with grass, groundcover, shrubs or other landscape material acceptable to the Planning Board or Zoning Enforcement Officer.
- j. All interior landscaped areas shall have a minimum planting soil depth of three feet and be free from all forms of construction debris and foreign material.
- k. All islands and medians shall have six inch high concrete curbing as a minimum to protect plant materials from damage.
- l. The dimensions of all islands and medians shall be measured from the landscaped side of the curb.

B. Preservation of Existing Trees

1. Efforts shall be made to preserve trees in a manner consistent with the Town of Amherst Tree Law (also known as Chapter 179 of the Amherst Town Code, as amended) and subsections (2) through (4) of this Section.
2. An existing tree can qualify for credit in accordance with subsection (4) of this Section if it meets all of the following criteria:
 - a. The tree is healthy, free from disease, damage or active insect infestation which is potentially lethal to the tree;
 - b. The tree is not a variety that has weak or brittle wood, or one which has excessive or noxious seed, pollen or fruit;
 - c. The tree is expected to live for a minimum of 10 years;
 - d. The tree is not seriously deformed or contorted; and
 - e. The tree is preserved in accordance with Section (3) below.

3. A root protection zone shall be established around any tree which is identified on the landscape plan as a tree to be preserved. The root protection zone is identified by creating a circle around the tree, the size of which is determined by providing one foot of radius for every inch of diameter of the tree measured at breast height (DBH). The root protection zone shall be marked in the field with a physical barrier such as temporary fencing or other means which shall prevent construction activities from occurring within the tree root protection zone. Methods for preserving and protecting existing trees shall be included as part of the landscape plan.
4. Existing trees preserved in accordance with this Section will be credited towards the fulfillment of a portion of the requirements for tree planting contained in these regulations in accordance with the following schedule:

SIZE OF EXISTING TREE THAT IS PRESERVED		
Deciduous Trees-DBH	Evergreen Trees-Height	Credits Toward Number of Required New Trees
Less than 4"	Less than 5'	0.5
4" or more but less than 6"	5' or more but less than 10'	1
6" or more but less than 12"	10' or more but less than 15'	2
12" or more	15' or more	3

5. The diameter of a single-stem tree that has a crotch between two feet and four and one-half feet above the ground shall be measured at the narrowest point between the ground and the crotch. The size of multi-stem trees shall be determined by adding together the diameter of the three largest stems as measured four and one-half feet above ground level.

Sec. 6.2.4. Buffers and Screening

A. General

1. The portion of the required front yard area which cannot be utilized for parking, loading, stacking or driveways shall be suitably landscaped and maintained by the owner in accordance with § 7-2-4A(2) of these regulations.
2. Vehicle Use Areas (VUAs) located adjacent to a public street shall be screened from the street with tree and shrub plantings, earthen berms, walls or a combination of these methods so as to establish an effective visual screen which is not less than 36 inches above the grade at the adjacent VUA within two years of installation. A minimum of one large deciduous tree, two small deciduous/ornamental trees or three evergreen trees or any combination thereof shall be planted within the required yard area for each 40 linear feet of frontage along a street.
3. Standards for dumpsters and other refuse collection container areas are provided in § 7-2-4D.
4. Standards for mechanical equipment, utility structures, multiple meter boards, generators, air conditioning units and Reduced Pressure Zone (RPZ) backflow preventor hot boxes are provided in § 7-2-4C.

5. Developments shall provide sufficient buffering and screening for the VUA. Buffering and screening may consist of trees and shrubs existing on the site prior to development. Supplemental plantings may be required in addition to the existing vegetation as determined by the Planning Board or Zoning Enforcement Officer in order to improve the screening properties of the buffer. Buffering and screening may also consist of tree and shrub plantings, earthen berms, fences, walls or a combination of these methods so as to establish an effective visual screen. When fences or walls are utilized for screening, trees and other plant materials (shrubs, vines, ground covers, perennials) shall also be used. Standards for landscaping are provided in § 7-2-4B.
6. All fences provided or required shall have an attractive, finished appearance facing any public right-of-way or adjacent property.

B. Minimum Impact of Screening Required

The following table and criteria shall be used to determine the level of screening between adjoining land uses. Single Family Residential districts include the R-R, S-A, R-1, R-2, R-3, CR-3A, TR-3 and R-4 districts. Multifamily Residential districts include the MFR-4A, MFR-5, MFR-6, MFR-7 and MHR-8 districts. For circumstances falling outside of these categories, the level of screening required will be determined during site plan review. For the RC district, the amount of screening required will be determined during site plan review.

PROPOSED LAND USE	EXISTING ADJACENT ZONING					
	SF Res.	MF Res.	Office	Commercial	Industrial	Community Facility
MF Residential	High	Medium	High	High	High	High
Office	High	High	Low* Medium†	Medium	Medium	Medium
Commercial	High	High	Medium	Low* Medium†	Low* Medium†	Medium
Industrial	High	High	Medium	Low* Medium†	Low* Medium†	Medium
Public/Civic	High	High	Medium	Medium	Medium	Low* Medium†

Key: * = 0 to 3 acres † = over 3 acres (proposed use)

1. High Impact Screening

When the proposed development is considered to have a high impact on the existing adjacent zoning according to the table in § 7-2-4B, one of the following methods for buffering and screening shall be provided between the VUA and the nearest property line.

- a. Buffering and screening may consist of healthy trees and shrubs existing on the site prior to development providing that they form an immediately effective visual screen at least 36 inches above the grade at the adjacent VUA and that the existing trees and shrubs are thoroughly protected from damage during construction by establishing a work limit line on

all site plan drawings. The work limit line shall be delineated in the field prior to site clearing in the vicinity of the required yard area. Supplemental plantings may be required in addition to the existing vegetation as determined by the Planning Board or Zoning Enforcement Officer in order to improve the screening properties of the buffer.

- b. Buffering and screening may consist of an earthen berm, masonry/stone wall or opaque wooden/vinyl fence with a minimum height of 36 inches above the grade at the adjacent VUA and one medium impact landscape screen evenly distributed within the required yard area (refer to Medium Impact Screen table below).

2. Medium Impact Screening

When the proposed development is considered to have a moderate impact on the existing adjacent zoning according to the table in § 7-2-4B, one of the following methods for buffering and screening shall be provided between the VUA and the nearest property line.

- a. Buffering and screening may consist of healthy trees and shrubs existing on the site prior to development, providing that they form an immediately effective visual screen at least 36 inches above the grade at the adjacent VUA and that the existing trees and shrubs are thoroughly protected from damage during construction by establishing a work limit line on all site plan drawings. The work limit line shall be delineated in the field prior to site clearing in the vicinity of the required yard area. Supplemental plantings may be required in addition to the existing vegetation as determined by the Planning Board or Zoning Enforcement Officer in order to improve the screening properties of the buffer.
- b. Buffering and screening may consist of either: (1) one medium impact landscape screen evenly distributed throughout the required yard area; or (2) an earthen berm, masonry/stone wall or opaque wooden/vinyl fence with a minimum height of 36 inches above the grade at the adjacent VUA and one low impact landscape screen evenly distributed throughout the required yard area (refer to Medium and Low Impact Screen tables below).

MEDIUM IMPACT LANDSCAPE SCREEN OPTIONS

Plant Type	Screen 1	Screen 2	Screen 3	Screen 4
Large Deciduous Trees	1/25 L.F.	1/40 L.F.	1/50 L.F.	1/50 L.F.
Small Deciduous/Ornamental Trees	0	0	1/60 L.F.	1/60 L.F.
Evergreen (Coniferous) Trees	0	1/40 L.F.	1/15 L.F.	1/20 L.F.
Evergreen & Deciduous Shrubs	1/5 L.F.	1/5 L.F.	0	1/15 L.F.

- c. Screen One shall be utilized only when yard area is less than 10 feet in width.
- d. Trees and shrubs shall be provided based on number of linear feet per applicable side or rear yard.
- e. Fractions of trees or shrubs shall be rounded to the nearest whole number.

3. Low Impact Screening

When the proposed development is considered to have a low impact on the existing adjacent zoning according to the table in § 1-1-1B, one of the following methods for buffering and

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screening shall be provided within the required minimum rear and side yards for the VUA's (for yard dimensions, refer to the Dimensional Standards for each zoning district).

- a. Buffering and screening may consist of healthy trees and shrubs existing on the site prior to development, providing that they form an immediately effective visual screen at least 36 inches above the grade at the adjacent VUA and that the existing trees and shrubs are thoroughly protected from damage during construction by establishing a work limit line on all site plan drawings. The work limit line shall be delineated in the field prior to site clearing in the vicinity of the required yard area. Supplemental plantings may be required in addition to the existing vegetation as determined by the Planning Board or Zoning Enforcement Officer in order to improve the screening properties of the buffer.
- b. Buffering and screening may consist of one low impact landscape screen evenly distributed within the required yard area (refer to low impact screen table below).

LOW IMPACT LANDSCAPE SCREEN OPTIONS

Plant Type	Screen 1	Screen 2	Screen 3	Screen 4
Large Deciduous Trees	1/40 L.F.	1/60 L.F.	1/80 L.F.	1/75 L.F.
Small Deciduous/Ornamental Trees	0	0	1/100 L.F.	1/75 L.F.
Evergreen (Coniferous) Trees	0	1/50 L.F.	1/25 L.F.	1/50 L.F.
Evergreen & Deciduous Shrubs	1/10 L.F.	1/5 L.F.	0	1/20 L.F.

- c. Trees and shrubs shall be provided based on number of linear feet per applicable side or rear yard.
- d. Fractions of trees or shrubs shall be rounded to the nearest whole number.

4. Screening Adjacent to Residential Zoning

When adjacent to the following districts: R-R, S-A, R-1, R-2, R-3, CR-3A, TR-3, R-4, MFR-4A, MFR-5, MFR-6, MFR-7 PRD, PDD, PRD, or NCD, any building or structure in the MFR-6, MFR-7, OB, GB, NB, CS, MS, SC, RD, ST, GI, AG, CF, R-R, S-A or RC districts must provide the following landscape buffering and screening within the required side and/or rear yard(s):

- a. An earthen berm with a minimum height of three (3) feet (measured at the top of a 1:3± grade) or an opaque wood or vinyl fence, brick, stone or ornamental concrete masonry unit wall with a minimum height of 5 feet and the following plant materials: a minimum of one evergreen tree per each 10 linear feet of property line adjacent to single-family residential zoning, one small deciduous or ornamental tree per each 15 linear feet of property line adjacent to residential zoning and one large deciduous tree per each 40 linear feet of property line adjacent to single-family residential zoning.

[Graphic? Not available on General Code website]

C. Screening of Mechanical Equipment

- 1. Non-single-family residential properties which may be viewed from residential uses, public streets or public park areas shall screen all roof, ground and wall mounted mechanical equipment (utility structures, multiple meter boards, generators, air conditioning units, backflow preventor [RPZ] hot boxes, etc.) from view at ground level of the property line.

2. All mechanical equipment shall be limited to that area shown on an approved site and development plan.
3. Roof-mounted mechanical equipment shall be screened or arranged so as to not be visible from residential uses, public streets or park areas and be shielded from view on four sides. Screening shall consist of materials consistent with the principal building materials, and may include metal screening or louvers which are painted to blend with the principal building.
4. Wall or ground-mounted equipment screening shall be constructed of:
 - a. Planting screens; or
 - b. Brick, stone, reinforced concrete, vinyl stockade or other similar material as approved by the Planning Board or Zoning Enforcement Officer;
 - c. Redwood, cedar, preservative pressure treated wood, or other similar materials; and
 - d. All fence posts shall be rust-protected metal, concrete-based masonry or concrete pillars, or an equivalent material as approved by the Commissioner of Building.
 - e. Mechanical equipment shall not be mounted on the roof or located in the front yard in any single-family residential district.

5. Dumpsters and Other Refuse Containers

The following standards shall apply to dumpsters and other refuse collection areas in the R-4, MFR-4A, MFR-5, MFR-6, MFR-7, MHR-8 and nonresidential districts.

- a. All dumpster areas ~~are shall be~~ limited to that area shown on an approved site and development plan. Dumpsters and other refuse containers may be located between the front face of the building and the adjacent roadway only with the approval of the Planning Board ([major site plan](#)) or Zoning Enforcement Officer ([minor site plan](#)), as applicable.
- b. Dumpster containers, other refuse containers, and all refuse ~~must shall~~ be visually screened on all sides from adjacent properties and private or public rights-of-way with an opaque material, which may include shrubs, walls, fences or berms. [Enclosures for dumpsters and other refuse containers must be at least 1 foot above all elements stored inside.](#) Materials and dumpsters stored in said areas shall not protrude above the screen.
- c. Where vegetative material is used, ~~the said~~ material ~~must shall~~ form an opaque screen within ~~2~~ [two](#) years from the time of first planting.
- d. When dumpster enclosure gates are used to address [paragraph b.](#) above, the gate ~~must shall~~ consist of materials that visually conceal 100 percent of the contents of the enclosure. Gates ~~must shall~~ remain in the closed position except when the dumpster is being loaded or unloaded or when access to the interior of the enclosure is needed for maintenance or other purposes. [Gates must not face the building entrance or adjacent residential buildings.](#)
- e. Dumpster containers and other refuse containers in residential districts ~~must shall~~ meet the setbacks established in § 3-15-6.

- f. The setbacks for dumpsters in nonresidential districts ~~are~~ **shall be** 5 feet from the property line of adjacent nonresidential districts and 10 feet from the property line of adjacent residential districts.

Sec. 6.2.5. **Parking Credits for Landscaping**

The Planning Board or Zoning Enforcement Officer, as applicable, may reduce the minimum number of off-street parking spaces required in § 7-1-6 by not more than 25 percent, provided that the land area so removed is not used to meet the landscape area required in this Section and is used exclusively for landscaping in accordance with the standards and criteria of this Section. If, at any time thereafter, the applicable site plan approval authority determines that the land area so removed is suitable for and is needed to provide necessary off-street parking, it may order the installation of such parking. The issuance of any Certificate of Occupancy or Certificate of Compliance shall be deemed conditional upon the possible requirement for the future installation of the additional off-street parking, upon such order by the applicable site plan approval authority. Failure to comply with such order within the time fixed thereby shall constitute a violation of this Ordinance.

Sec. 6.2.6. **Existing Development**

Where an existing development that requires site plan review proposes an increase in the Parking Area of 3,000 or more square feet, the proposed site plan shall provide interior landscaped areas for the added Parking Area as required by § 7-2-3A(3). The proposed site plan shall also provide buffering and screening for the added Parking Area consistent with the standards in § 7-2-4.

Sec. 6.2.7. **Enforcement and Maintenance**

- A. All landscaped areas required and/or permitted by these regulations shall be maintained and preserved according to the approved landscape plan. Landscaped areas shall be kept free of trash, litter, weeds and other such materials.
- B. All plant materials provided for a development in accordance with the approved landscape plan shall be in a healthy and vigorous growing condition, exhibit good form, and display in excess of 75 percent leaf cover, as determined by the Division of Forestry, in order to be considered acceptable for the purposes of compliance with the site plan at the time of inspection for Certificate of Occupancy or Certificate of Compliance. All plant materials which are considered to be unacceptable for the purposes of compliance with these regulations shall be replaced with acceptable plant material prior to the issuance of a final Certificate of Occupancy or Certificate of Compliance.
- C. Trees which existed on the site prior to development and are identified on the landscape plan as trees to be preserved cannot be removed during construction without first obtaining a Tree Removal Permit or an amendment to the site plan. The removal of existing trees to be preserved without Town approval shall be considered a violation of the Town of Amherst Tree Law, also known as Local Law 8-1992, as amended.
- D. After the issuance of a final Certificate of Occupancy or Certificate of Compliance, plant materials which die or are not maintained in a healthy and growing condition with at least 50 percent leaf cover shall be replaced within the next growing season with plantings of a similar nature. Plantings

intended to serve as a visual screen which die or are not maintained in a healthy and growing condition after three years from the date of issuance of the final Certificate of Occupancy or Certificate of Compliance shall be replaced with plantings of a size and nature sufficient to achieve the visual screen intended.

- E. All trees shall be planted in accordance with the methods illustrated by the planting details required to be shown on the approved landscape plan. Trees not planted in accordance with these methods will not be considered acceptable for the purposes of compliance with the Site Plan and shall be replanted in accordance with the methods illustrated in the details, or the method of planting otherwise corrected so as to be acceptable to the Town prior to the issuance of a final Certificate of Occupancy or Certificate of Compliance. Where tree stakes and guy wires are used, they shall be removed from newly planted trees no sooner than 12 months after planting and no later than 18 months after planting.
- F. Inspections required by this Section shall be the responsibility of the Division of Forestry.

Sec. 6.2.8. **Fences and Walls**

- A. No fence or wall in a residential district shall exceed six feet in height, except where it abuts a nonresidential district, in which event it shall not exceed eight feet in height, provided, however, that a fence or wall not exceeding 12 feet in height enclosing a tennis court shall be permitted. For the purpose of screening, the Planning Board or Zoning Enforcement Officer as applicable, may require fences, vegetation or other appropriate material in nonresidential districts where they abut residential districts to assure privacy for adjacent land uses with visual, noise and air quality factors considered.
- B. With the exception of those used for screening loading docks, dumpsters, refuse containers, outdoor storage and mechanical equipment as required by this Ordinance, no fence or wall in a nonresidential district shall exceed eight feet in height.
- C. No fence or wall, other than a necessary retaining wall, over three feet in height shall extend into the front yard of any lot, except in an industrial district. For the purposes of administration of this Section, the front yard of a principal structure shall be the yard abutting the street that is directly associated with the primary entrance to the structure.
- D. The height of all fences or walls shall be measured from the average finished grade as determined by the Commissioner of Building. Average height should generally follow the lay of the land.

DIV. 6.3. SITE LIGHTING

Sec. 6.3.1. Purpose

Nonresidential and multifamily buildings and projects shall be designed to provide safe, convenient, and efficient lighting for pedestrians and vehicles. Lighting shall be designed in a consistent and coordinated manner for the entire site. The lighting and lighting fixtures shall be integrated and designed so as to enhance the visual impact of the project on the community and/or should be designed to blend into the surrounding landscape. Lighting fixtures shall be designed, sized and located so as not to cast direct rays of light upon adjoining premises or cause glare hazardous to pedestrians or persons using adjacent public streets. Illumination shall not be used for the purpose of advertising or attracting attention to the principal use, except as permitted by § 7-8, Sign Regulations.

Sec. 6.3.2. Applicability

A site lighting plan shall be required during review of any nonresidential or multifamily site and development plan. The contents of the site lighting plan shall be established by the Zoning Enforcement Officer.

Sec. 6.3.3. Site Lighting Design Requirements

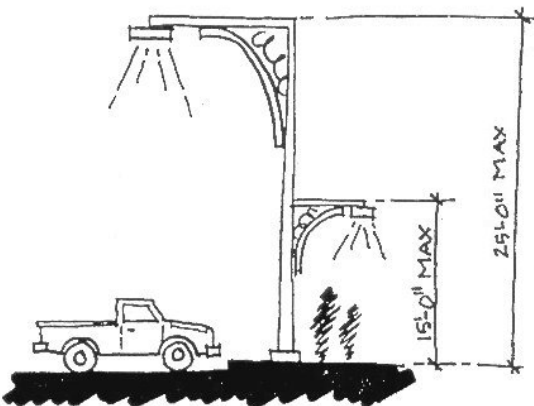
Lighting shall be used to provide safety while accenting key architectural elements and to emphasize landscape features. Light fixtures shall be designed as an integral design element that complements the design of the project. This can be accomplished through style, material or color. All lighting fixtures designed or placed so as to illuminate any portion of a site shall meet the following requirements:

A. Fixture (Luminaire).

The light source shall be concealed and shall not be visible from any street right-of-way or adjacent properties. In order to direct light downward and minimize the amount of light spillage into the night sky and onto adjacent properties, all lighting fixtures shall be cutoff fixtures. Only architectural lighting may be directed upward provided that all other provisions of this Section are met.

B. Fixture Height

Lighting fixtures shall be a maximum of 25 feet in height within parking lots and shall be a maximum of 15 feet in height within non-vehicular pedestrian areas. For additional requirements, see § 7-3-5A.



C. Light Source (Lamp)

The same light source type shall be used for the same or similar types of lighting on any one site throughout any development. See § 7-3-6 for prohibited light sources.

D. Mounting

Fixtures shall be mounted in such a manner that the cone of light is contained on-site and does not cross any property line of the site.

E. Footing

All footings for light poles shall have an attractive architectural treatment, as determined by the Zoning Enforcement Officer, or be located entirely below finished grade so as not to be visible.

F. Limit Lighting to Periods of Activity

The use of sensor technologies, timers or other means to activate lighting during times when it will be needed may be required by the Zoning Enforcement Officer to conserve energy, provide safety, and promote compatibility between different land uses.

Sec. 6.3.4. Illumination Level

A. Illumination levels shall be measured in footcandles.

B. All site lighting shall be designed so that the level of illumination, as measured in footcandles at any one point, meets the standards in the table below.

C. Minimum and maximum levels are measured on the pavement within the lighted area. Average level is the overall, generalized ambient light level, and is measured as a not-to-exceed value. The average level shall be calculated using only the area of the site intended to receive illumination.

LIGHTING LEVEL (FOOTCANDLES)			
Lighting Type	Minimum	Average	Maximum
Architectural	0.0	1.0	5.0
Canopy Area	2.0	0.0	15.0
Multifamily Parking Lots	0.20	1.0	8.0
Nonresidential and Multifamily Entrances/Exits	1.0	5.0	15.0
Nonresidential Parking Lots	0.2	1.5	10.0
Security	0.2	1.0	10.0
Vehicle Sales, Rental and Leasing	0.2	3.0	15.0
Walkways, Landscape or Decorative	0.2	0.8	5.0

D. All outdoor lighting shall be designed and located such that the maximum illumination measured in footcandles at the property line does not exceed 0.2 on adjacent residential use, and 0.5 on adjacent commercial sites and public rights-of-way.

E. No direct light source shall be visible at the property line at ground level or above.

F. Lighting shall not be oriented so as to direct glare or excessive illumination onto streets in a manner that may distract or interfere with the vision of drivers on such streets.

Sec. 6.3.5. **Lighting Required for Specific Uses**

A. **Sites Adjacent to Residential Uses**

1. All lights shall be shielded so as to deflect light away from any residential use.
2. Illumination at the public right-of-way line when a nonresidential use is across the public right-of-way from a residential use shall not exceed one footcandle.
3. All light fixtures located within 50 feet of any residential use shall not exceed 15 feet in height.
4. Unless properly shielded, security lighting fixtures such as wall packs shall not face a residential use.

B. **Canopy Area Lighting**

All development that incorporates a canopy area over fuel sales, automated bank machines, or similar installations shall use a recessed lens cover flush with the bottom surface of the canopy that provides a cutoff or shielded light distribution. Areas under a vehicular canopy shall have an average of 10 foot candles as measured at ground level at the inside of the outside edge of the canopy.

C. **Automated Teller Machines**

An automated teller machine (ATM) shall be illuminated in accordance with the ATM Safety Act (NYS Banking Law, Article II-AA).

Sec. 6.3.6. **Prohibited Light Sources**

Except as otherwise provided in this Section, the following light sources and light fixtures and sources shall not be used within the Town where the direct light emitted is visible from adjacent areas.

- A. Low-pressure sodium and mercury vapor light sources.
- B. Cobra-head-type fixtures having dished or drop lenses or refractors which house other than incandescent sources.
- C. Searchlights and other high-intensity narrow-beam fixtures.
- D. Lighting fixtures that have flashing, rotating, moving, pulsing or alternating colored sources, except between Thanksgiving Day and January 15, as provided in § 7-8, Sign Regulations.

DIV. 6.4. OUTDOOR STORAGE, DISPLAY

Sec. 6.4.1. General

Outdoor display and storage shall be allowed in nonresidential districts in accordance with this Section. Any merchandise, material or equipment situated outdoors in nonresidential districts shall be subject to the requirements of this Section.

Sec. 6.4.2. Allowed Outdoor Storage and Display

A. Three types of outdoor storage and display shall be allowed in the districts designated in the Table below.

DISTRICTS				
Category	NB	GB, SC	CS, MS	RD, GI
Outdoor Display	Yes	Yes	Yes	
Limited Outdoor Storage		Yes	Yes	Yes
General Outdoor Storage			Yes	Yes

- B. Allowed outdoor storage and display shall meet the vehicle use area setbacks provided in each district or a minimum of 20 feet from any lot line, whichever is greater.
- C. In the NB district, all outdoor display shall be returned to a completely enclosed structure when the associated business is not open.
- D. In the ST district, outdoor storage and display shall not be permitted except for the measurement of climatic effects on stored materials. No such storage area shall be located in any required front, side or rear yard.

Sec. 6.4.3. Categories of Outdoor Storage and Display

A. Outdoor Display

1. Outdoor display constitutes the display of items actively for sale.
2. Outdoor display shall be allowed adjacent to a principal building wall and may only extend a distance no greater than five feet from the wall. Such display shall not be permitted to block windows, entrances or exits, and shall not impair the ability of pedestrians to use the building and sidewalk.
3. Outdoor display may not occupy more than 30 percent of the linear distance along any principal building wall facing a public right-of-way.

B. Limited Outdoor Storage

1. Limited outdoor storage is temporary storage of goods in individual packaging and not in storage containers. Organic materials stored on pallets are considered limited outdoor storage.

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2. Limited outdoor storage shall not exceed 1,000 square feet or 10 percent of the total site area (whichever is greater), except in the CS and GI districts where additional outdoor storage and display is allowed provided that the storage and display is completely screened from view outside the site by a solid opaque wall or fence at least six feet in height. Such area may extend from the principal building, but not for a distance greater than 50 feet.
3. Limited outdoor storage may not occupy more than 30 percent of the linear distance along any principal building wall facing a public right-of-way.
4. Limited outdoor storage shall not be allowed in required off-street parking spaces.

C. General Outdoor Storage

1. General outdoor storage consists of all remaining forms of outdoor storage not classified as outdoor display or limited outdoor storage, including the storage of combustible or flammable liquids, items stored in shipping containers, conexes and semi-trailers not attached to a truck.
2. General outdoor storage shall be allowed in unlimited quantity, provided that the storage area is completely screened from any public right-of-way or adjacent residentially zoned property and meets the location restrictions below.
3. No general outdoor storage shall be permitted within the following areas:
 - a. The public right-of-way;
 - b. Any required landscape area;
 - c. A required front or side setback;
 - d. Between a front setback and the building front;
 - e. Between a side setback along a public right-of-way and any structure; and
 - f. Any required off-street parking areas.
4. Areas intended for general outdoor storage shall be paved, or have an alternate surface as approved by the Commissioner of Building.

Sec. 6.4.4. Exceptions

- A. Vehicles for sale as part of a properly permitted vehicle sales use (including boats and manufactured housing) shall not be considered merchandise, material or equipment subject to the restrictions of this Section. Such vehicles shall be located and displayed on a paved vehicle use area, or on an alternate surface as approved by the Commissioner of Building, clearly indicated on the site plan, and screened under the same requirements for a parking lot.
- B. Waste generated on-site and deposited in ordinary refuse containers shall not be subject to the restrictions of this Section.

DIV. 6.5. ACCESS, CIRCULATION

Sec. 6.5.1. Location of Existing and Planned Transit Routes

Any proposed development shall take into account the location of existing and planned transit routes and provide vehicular and pedestrian connections to any transit points within or adjacent to the development.

Sec. 6.5.2. Street, Road and Highway Barricades

Unless authorized by the Planning Board, the erection or maintenance of a barricade preventing access to or from a town highway or private road or street on or adjacent to such property shall not be permitted. Any barricade installed shall comply with the provisions of § 7-6-7B.

Sec. 6.5.3. Public Access

No use shall be permitted to take direct access to a street except as permitted in this Section.

A. Local Streets

All residential uses may take direct access to local streets. Nonresidential uses shall not take direct access to local streets, except when no higher street classification is available.

B. Collector Streets

No single-family dwelling shall take direct access to collector streets, except when no local street is available.

C. Arterial Streets

No residential use, other than multifamily, shall take direct access to major or minor arterial streets. When uses take access to an arterial street, the point of access shall be directly across from another existing point of access, or spaced at least 200 feet from any intersecting street or other point of access to the arterial.

Sec. 6.5.4. Private Access

Buildings and land shall either abut a dedicated street or be arranged in groups or clusters so that groups or clusters abut a dedicated street for the required lot width, provided that:

- A. Each building is accessible by means of a private street to service and emergency vehicles.
- B. The standards of design and construction for private streets shall meet applicable town specifications for public streets unless modified by the approved site plan.
- C. The location, design and construction of all utilities meet all applicable specifications and are adequate to serve the needs of the group or cluster.
- D. The procedures for the preservation and maintenance of private streets, pedestrian ways and common open space comply with all applicable laws.

Sec. 6.5.5. **Private Access Easements**

A. **Cross-Access**

Private cross-access easements may be required across any lot fronting on an arterial or collector street in order to minimize the number of access points and facilitate access between and across individual lots. The easement shall meet the following design requirements.

1. If a parcel is to be developed for any nonresidential land use, a cross-access easement shall be provided to adjoining properties that front on the same street and that are, or may be, developed as nonresidential land uses. The easement shall be clearly identified on any site plan submitted pursuant to this Ordinance. The easement shall be filed with the Erie County Clerk's Office for recordation.
2. Cross-access easements shall have a minimum width of 24 feet and shall be generally parallel to the street right-of-way line abutting both parcels. Access easement facilities shall be maintained by the property owner.
3. The property owner shall provide appropriate documentation of a good faith effort to extend the access easement through all immediately abutting properties. If such an effort fails, the portion of the easement on the subject site shall be developed and designed to provide for future connection to the neighboring properties.
4. Where a cross-access easement is granted, no permanent structures that would interfere with the proposed access shall be permitted in the easement. Some improvements such as medians and parking islands may be constructed within an access easement if it has been demonstrated that adequate circulation and cross access has been accomplished, and that all applicable standards of this Ordinance have been met.
5. All cross-access improvements shown on a site plan shall be constructed and stubbed, and future development of adjacent property shall complete a connection to any existing stub.
6. The Planning Board may waive the requirement for a cross-access easement required above in those cases where unusual topography or site conditions would render such an easement of no useable benefit to adjoining properties.
7. The Planning Board may approve the closure of a cross-access easement in those cases where adjoining parcels are subsequently developed with a residential use.

B. **Shared Access**

A joint private access easement may be required between adjacent lots fronting on arterial and collector streets in order to minimize the total number of access points along those streets and to facilitate traffic flow between lots. The location and dimensions of said easement shall be determined by the Planning Board or Director, as applicable.

Sec. 6.5.6. **Access Design Requirements**

A. **Minimum Access**

Each parcel of land which lawfully exists and which abuts a street right-of-way shall be permitted at least one access point, except where otherwise restricted by the Town.

B. **Additional Access**

The Planning Board may require more than one access point onto a collector or arterial street for a single parcel during site plan review provided that the number and location of access points onto local streets and the additional access points onto collector and arterial streets shall be approved by the highway authority having jurisdiction over the roadway from which access is being taken.

C. **Width of Access**

The width of access driveways shall be determined by the highway authority having jurisdiction over the roadway from which access is being taken. However, in no case shall an individual driveway width be greater than 45 feet, except that the width of a landscaped center median shall not count towards this standard.

D. **Closure or Relocation of Existing Access Points**

The Planning Board, in conjunction with the authority having jurisdiction over the roadway from which access is being taken, shall have the authority to require the closure or relocation of existing access points where multiple access points to the site are available.

E. **Curb Cuts at Intersections**

A curb cut for a corner parcel at the intersection of any streets shall be located the maximum practical distance from the intersection point of the rights-of-way of the intersecting streets, without intrusion into any required buffer. The number and location of the curb cuts shall be approved by the highway authority having jurisdiction over the street from which access is being taken.

Sec. 6.5.7. **Fire Apparatus Access Road Requirements**

All developments shall be required at least one means of fire apparatus access. Developments exceeding the thresholds set forth in § 7-6-7C shall require at least two means of fire apparatus access. Access lanes shall be placed a distance apart equal to not less than one half of the maximum overall diagonal dimension of the property or area to be served (measured in a straight line between access points).

A. **Aerial Fire Apparatus Access Road Dimensions**

1. **Height**

Where required, buildings or portions of buildings or facilities exceeding 30 feet in height above the lowest level of fire department vehicle access shall be provided with approved fire apparatus access roads capable of accommodating fire department aerial apparatus. Overhead utility and power lines shall not be located within the aerial fire apparatus access roadway.

2. Width

Fire apparatus access roads shall have a minimum unobstructed width of 26 feet in the immediate vicinity of any building or portion of building more than 30 feet in height.

3. Proximity to Building

At least one of the required access routes meeting this condition shall be located within a minimum of 15 feet and a maximum of 30 feet from the building, and shall be positioned parallel to the building. Such access shall be either paved as part of the sidewalk system or be part of the parking lot pavement. Required access routes shall not be used as snow storage areas that would impede emergency access. If such access is part of the parking lot pavement, these areas shall be striped or otherwise delineated with pavement markings and "No Parking" signs to prevent parked cars or delivery vehicles from impeding emergency access.

B. Fire Apparatus Road Gates

1. The minimum gate width shall be 20 feet.
2. Gates shall be of the swinging or sliding type and of a triangular shape.
3. Construction of gates shall be of materials that allow manual operation by one person.
4. Gate components shall be maintained in an operative condition at all times and replaced or repaired when defective.
5. Electric gates shall be equipped with a means of opening the gate by fire department personnel for emergency access. Emergency opening devices shall be approved by the code official. Locking device specifications shall be submitted for approval by the code official.

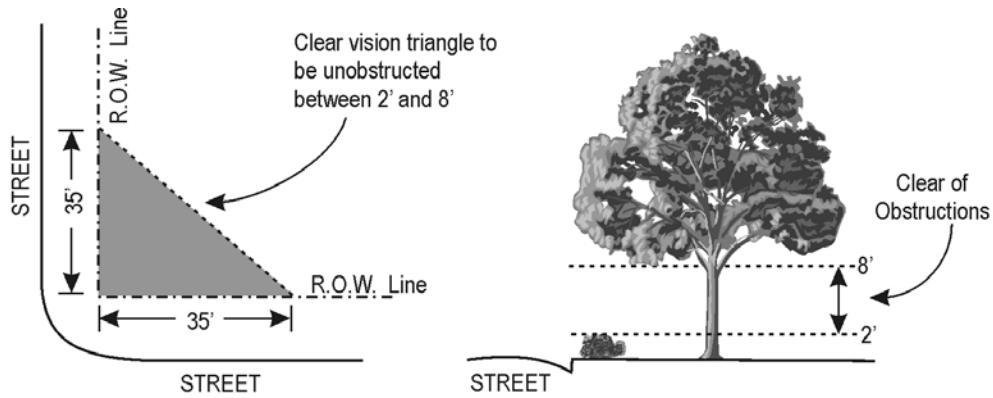
C. Second Access

Approval of a site plan or subdivision, including individual phases of a site plan or subdivision, shall not be granted where a cul-de-sac, dead-end or any street with only one point of access from an improved public right-of-way exceeds the requirements established in the current International Fire Code. The purpose of this paragraph is to comply with the International Fire Code as it may change by amendment over time.

Sec. 6.5.8. Clear Vision Triangle

- A. A clear vision triangle is the triangle formed on corner lots between points on the front, side or rear lot lines or edges of pavement on a private street 35 feet from the intersection of the right-of-way lines or edges of pavement on a private street.
- B. Within that area no fence, wall, ornamental gate or portal, bushes, shrubbery or stored material ~~is shall be~~ permitted higher than 2 feet above the average finished grade of the lot.
- C. Trees ~~are shall be~~ permitted within the area only if maintained and trimmed so that no branches or foliage are less than 8 feet above the average finished grade of the lot.

- D. No building ~~may shall~~ be located within the areas, except that this restriction ~~does shall~~ not apply above the bottom of the second floor ~~nor~~ to columns of a size required to carry the weight of upper stories.



DIV. 6.6. FLOOD HAZARD REDUCTION

Sec. 6.6.1. Findings

The Town Board of the Town of Amherst finds that the potential and/or actual damages from flooding and erosion may be a problem to the residents of the Town of Amherst and that such damages may include: destruction or loss of private and public housing, damage to public facilities, both publicly and privately owned, and injury to and loss of human life. In order to minimize the threat of such damages and to achieve the purposes and objectives hereinafter set forth, this Section is adopted.

Sec. 6.6.2. Purpose

It is the purpose of this Section to promote the public health, safety and general welfare and to minimize public and private illnesses due to flood conditions in specific areas by provisions designed to:

- A. Regulate uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Control the alteration of natural floodplains, stream channels and natural protective barriers which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging and other development which may increase erosion or flood damages;
- E. Regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and
- F. Qualify and maintain for participation in the National Flood Insurance Program.

Sec. 6.6.3. Objectives

The objectives of this Division are:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To provide that developers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Sec. 6.6.4. Definitions

[Integrate with other definitions?]

APPEAL. A request for a review of the Local Administrator's interpretation of any provision of this Part or a request for a variance.

AREA OF SHALLOW FLOODING. A designated AO, AH or VO Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average annual depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This area may be designated as Zone A, AE, AH, AO, A1-30, A99, V, VO, VE or V1-30. It is also commonly referred to as the "base floodplain" or "100-year floodplain."

BASE FLOOD. The Flood having a one-percent chance of being equaled or exceeded in any given year.

BASEMENT. That portion of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL. A wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

BUILDING. See "structure."

CELLAR. The same meaning as "basement."

COASTAL HIGH-HAZARD AREA. Area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources. The area is designated on a FIRM as Zone V1-30, VE, VO or V.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, paving, excavation or drilling operations or storage of equipment or materials.

ELEVATED BUILDING. A non-basement building built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X or D, to have the top of the elevated floor or, in the case of a building in Zones V1-30, VE or V,[1] to have the bottom of the lowest horizontal structure member of the elevated floor elected above the ground level by means of pilings, columns (posts and piers) or shear walls parallel to the flow of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X or D, elevated building also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zones V1-30, VE or V, elevated building also includes a building otherwise meeting the definition of elevated building, even though the lower area is enclosed by means of breakaway walls that meet the federal standards.

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EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads, is complete before the effective date of the floodplain management regulations adopted by the community.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.

FEDERAL EMERGENCY MANAGEMENT AGENCY. The federal agency that administers the National Flood Insurance Program.

FLOOD BOUNDARY AND FLOODWAY MAP (FHBM). An official map of the community published by the Federal Emergency Management Agency as part of a riverine community's Flood Insurance Study. The FBFM delineates a regulatory floodway along watercourses studied in detail in the Flood Insurance Study.

FLOOD ELEVATION STUDY. An examination, evaluation and determination of the flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of flood-related erosion hazards.

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

1. The overflow of inland or tidal waters; or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD OR FLOODING. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined above.

FLOOD HAZARD BOUNDARY MAP (FHBM). An official map of a community, issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been designated as Zone A but no flood elevations are provided.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. See "Flood Elevation Study."

FLOODPLAIN OR FLOOD-PRONE AREA. Any land area susceptible to being inundated by water from any source (see definition of flooding).

FLOODPROOFING. Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOODWAY. Same meaning as "regulatory floodway."

FUNCTIONALLY DEPENDENT USE. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding and ship repair facilities. The term does not include long-term storage, manufacturing, sales or service facilities.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirement for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
5. By an approved state program as determined by the Secretary of the Interior; or
6. Directly by the Secretary of the Interior in states without approved programs.

LOCAL ADMINISTRATOR. The person appointed by the community to administer and implement this Part by granting or denying development permits in accordance with its provisions.

LOWEST FLOOR. Lowest floor of the lowest enclosed area (including basement or cellar). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's "lowest floor," provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this Part.

MEAN SEA LEVEL. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

NATIONAL GEODETIC VERTICAL DATUM (NGVD). As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain.

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NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation and includes any subsequent improvements to such structure.

ONE-HUNDRED-YEAR FLOOD. The same meaning as "base flood."

PRINCIPALLY ABOVE GROUND. At least 51 percent of the actual cash value of the structure, excluding land value, is above ground.

RECREATIONAL VEHICLE. A vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projections;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Not designed primarily for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

REGULATORY FLOODWAY. Means 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 as determined by the federal emergency management agency in a flood insurance study or by other agencies as provided in 7-7-6C(2).

SAND DUNES. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

START OF CONSTRUCTION. The initiation, excluding planning and design, of any phase of a project or physical alteration of the property, and shall include land preparation, such as clearing, grading and filling; installation of streets and/or walkways; excavation for a basement, footings, piers or foundations; or the erection of temporary forms. It also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers and building materials. For manufactured homes, the "actual start" means affixing of the manufactured home to its permanent site.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

VARIANCE. A grant of relief from the requirements of this Part which permits construction or use in a manner that would otherwise be prohibited by this Part.

Sec. 6.6.5. **General Provisions**

A. **Lands to Which This Part Applies**

This Section shall apply to all areas of special flood hazard within the jurisdiction of the Town of Amherst.

B. **Basis for Establishing the Areas of Special Flood Hazard**

1. The areas of special flood hazard have been identified by the Federal Emergency Management Agency in a scientific and engineering report entitled "Flood Insurance study, Town of Amherst, New York, Erie County," dated October 16, 1992, with Flood Insurance Rate Maps as enumerated on Map Index No. 3602260001 through 0016, dated October 16, 1992, and the following Letters of Map Revision: (a) FEMA Case No. 95-02-15P, issued on August 17, 1995, which corrected an error in flood way mapping on Panel 0009; (b) FEMA Case No. 95-02-037P, effective May 8, 1996, which incorporates a revised hydraulic analysis of Ellicott Creek affecting Panel 0015.
2. The above documents are hereby adopted and declared to be a part of this Section and are filed at the Offices of the Town Clerk and the Building, Engineering, and Planning Departments.

C. **Interpretation, Conflict with Other Laws**

1. This Section includes all revisions to the National Flood Insurance Program through November 1, 1989, and shall supersede all previous laws adopted for the purpose of flood damage prevention.
2. In their interpretation and application, the provisions of this Section shall be held to be minimum requirement, adopted for the promotion of the public health, safety and welfare. Whenever the requirement of this Section are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

D. **Penalties for Noncompliance**

1. No structure in an area of special flood hazard shall hereafter be constructed, located, extended, converted or altered and no land shall be excavated or filled without full compliance with the terms of this Section and any other applicable regulations. Any infraction of the provisions of this Section by failure to comply with any of its requirements, including infractions of conditions and safeguards established in connection with conditions of the permit, shall constitute a violation. Any person who violates this Section or fails to comply with any of its requirement shall be punished in accordance with the provisions of 8-16-1, Penalties of Violation, of this Ordinance.

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2. Each day of noncompliance shall be considered a separate offense. Nothing herein contained shall prevent the Town of Amherst from taking such other lawful action as necessary to prevent or remedy an infraction. Any structure found not compliant with the requirements of this Section for which the developer and/or owner has not applied for and received an approved variance under § 8-13 will be declared noncompliant and notification sent to the Federal Emergency Management Agency.

E. **Warning and Disclaimer of Liability**

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

Sec. 6.6.6. **Administration**

A. **Designation of Local Administrator**

The Commissioner of Building is hereby appointed Local Administrator to administer and implement this Section by granting or denying development permits in accordance with its provisions.

B. **Establishment of the Development Permit**

A floodplain development permit shall be obtained before the start of construction or any other development, including the placement or replacement of manufactured homes or recreational vehicles, within the area of special flood hazard within the jurisdiction of the Town of Amherst as established in paragraph 7-7-5B(1) above. Application for a development permit shall be made on forms furnished by the local Administrator and may include, but not be limited to: plans, in triplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing.

1. Fees

All applications for a floodplain development permit shall be accompanied by an application fee as specified in the Schedule of Fees. In addition, the Town of Amherst reserves the right to recover from the permittee all reasonable costs necessary for review, approval and inspection of this project.

2. Application Stage

The following information is required, where applicable:

- a. Elevation in relation to mean sea level of the proposed lowest floor (including basement or cellar) of all structures;

- b. Elevation in relation to mean sea level to which any residential or nonresidential structure will be floodproofed;
- c. When required, a certificate from a licensed professional engineer or architect that the utility floodproofing will meet the criteria in § 7-7-7C;
- d. Certificate from a licensed professional engineer or architect that the floodproofed structure will meet the floodproofing criteria where applicable in § 7-7-8; and
- e. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

3. Construction Stage

Upon placement of the lowest floor or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the Local Administrator a certificate of the elevation of the lowest floor or floodproofed elevation in relation to mean sea level. The elevation certificate shall be prepared by or under the direct supervision of a licensed land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, the floodproofing certificate shall be prepared by or under the direct supervision of a licensed professional engineer or architect and certified by same. Any further work undertaken prior to submission and approval of the certification shall be at the permit holder's risk. The Local Administrator shall review all data submitted. Deficiencies detected shall be cause to issue a stop-work order for the project unless immediately corrected.

C. Duties of the Local Administrator

Duties of the Local Administrator shall include, but not be limited to:

1. Permit Application Review

- a. Review of all development permit applications to determine that the requirements of this Section have been satisfied.
- b. Review of all development permit applications to determine all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- c. Review of all development permit applications to determine if the proposed development adversely affects the area of special flood hazard. For the purposes of this Section, "adversely affects" means physical damage to adjacent and other properties. An engineering study may be required of the petitioner for this purpose.
- d. If there is no adverse affect, then the permit shall be granted consistent with the provisions of this Section.
- e. If there is an adverse affect, then flood damage mitigation measures shall be made a condition of the permit.
- f. Review all development permits for compliance with the provisions of § 7-7-7E, Encroachments.

2. Use of Other Base Flood and Floodway Data

When base flood elevation data has not been provided in accordance with § 7-7-5B above, the Local Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, including data developed pursuant to § 7-7-7D(4) in order to administer § 7-7-8, Specific Standards, and § 7-7-9, Floodways.

3. Information to be Obtained and Maintained

- a. Obtain and record the actual elevation, in relation to mean sea level, of the lowest floor, including basement or cellar, of all new or substantially improved structures and whether or not the structure contains a basement or cellar.
- b. For all new or substantially improved floodproofed structures:
 - i. Obtain and record the actual elevation, in relation to mean sea level, to which the structure has been floodproofed; and
 - ii. Maintain the floodproofing certifications required in § 7-7-4 and § 7-7-8.
- c. Maintain for public inspection all records pertaining to the provisions this Section including variances when granted and certificates of compliance or occupancy.

4. Alteration of Watercourses

- a. Notify adjacent communities and the NYS Department of Environmental Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Regional Director, Federal Emergency Management Agency, Region II, 26 Federal Plaza, New York, New York 10278.
- b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries

- a. The Local Administrator shall have the authority to make interpretation when there appears to be a conflict between the limits of the federally identified area of special flood hazard and actual field conditions.
- b. Base flood elevation data established pursuant to § 7-7-5B or (1)(f) above, when available, shall be used to accurately delineate the areas of special flood hazard.
- c. The Local Administrator shall use flood information from any other authoritative source, including historical data, to establish flood elevations within the areas of special flood hazard when base flood elevations are not available.

6. Stop-Work Orders

- a. All floodplain development found ongoing without a floodplain development permit shall be subject to the issuance of a stop-work order by the Local Administrator. Disregard of a stop-work order shall subject the violator to the penalties described in subsection 7-7-5D of this Section.

- b. All floodplain development found noncompliant with the provisions of this Section and/or the conditions of the floodplain development permit shall be subject to the issuance of a stop-work order by the Local Administrator.

7. Inspections

The Local Administrator and/or the developer's engineer or architect shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions and enable said inspector to certify that the development is in compliance with the requirements of the development permit and/or any variance provisions.

8. Certificate of Compliance or Occupancy

- a. It shall be unlawful to use or occupy or to permit the use or occupancy of any building or premises, or both, or part thereof hereafter created, erected, changed, converted or wholly or partly altered or enlarged in its use or structure until a certificate of compliance or occupancy has been issued by the Local Administrator stating that the building or land conforms to the requirements of this Section.
- b. All other development occurring within the designated areas of special flood hazard will have upon completion a certificate of compliance or occupancy issued by the Local Administrator.
- c. All certifications shall be based upon the inspections conducted subject to (7) above and/or any certified elevations, hydraulic information, floodproofing, anchoring requirements or encroachment analysis which may have been required as a condition of the approved permit.

Sec. 6.6.7. General Standards

In all areas of special flood hazard, the following standards are required:

A. Anchoring

1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
2. All manufactured homes shall be installed using methods and practices which minimize flood damage. Manufactured homes must be elevated and anchored to resist flotation, collapse or lateral movement. Manufactured homes shall be elevated in accordance with § 7-7-8B. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
3. All recreational vehicles placed on-site for longer than 180 consecutive days and not fully licensed and ready for highway use must be elevated and anchored to resist flotation, collapse or lateral movement. Recreational vehicles shall be elevated in accordance with § 7-7-8B.

B. Construction Materials and Methods

1. All new construction and substantial improvement shall be constructed with materials and utility equipment resistant to flood damage.

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2. All new construction and substantial improvement shall be constructed using methods and practices that minimize flood damage.

C. Utilities

1. Electrical, heating, ventilation, plumbing, air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. When designed for location below the base flood elevation, a professional engineer's or architect's certification is required.
2. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
3. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters.
4. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

D. Subdivision Proposals

1. All subdivision proposals shall be consistent with the need to minimize flood damage.
2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
4. Base flood elevation data shall be provided by the permit petitioner for subdivision proposals and other proposed developments, including proposals for manufactured home and recreational vehicle parks and subdivisions greater than either three lots or five acres.
5. In all areas of special flood hazard in which base flood elevation data are available pursuant to (4) or § 7-7-5 and no floodway has been determined the cumulative effects of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.
6. In all areas of the special flood hazard where floodway data are provided or available pursuant to § 7-7-5, the requirements of § 7-7-9, Floodways, shall apply except as provided in (7) below.
7. Notwithstanding any other provisions of this Part, certain development in Zones A1-30, AE and AH may be permitted to increase the water surface elevation of the base flood (e.g. dams, levees, etc.), provided that the Town of Amherst endorses application to the Federal Emergency Management Agency (FEMA), the permit petitioner provides all necessary data and analyses and pays all fees, and FEMA approval is received.

E. Encroachments

1. All proposed development in riverine areas where no flood elevation data are available (unnumbered A Zones) shall be reviewed as set forth in § 7-7-6C(1), Permit Application Review, to determine the effects of the encroachment on the flood-carrying capacity of the stream. The Local Administrator may require submission of additional technical analyses and data necessary to complete the determination.
2. The Local Administrator shall require within Zones AH and AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

Sec. 6.6.8. Specific Standards

In all areas of special flood hazard where base flood elevation data has been provided as set forth in § 7-7-5, Basis for Establishing the Areas of Special Flood Hazard and § 7-7-6C(2), Use of Other Base Flood Data, the following standards are required:

A. Residential Construction

New construction and substantial improvements of residential structures shall be constructed in accordance with Paragraphs A or B as follows:

1. Paragraph A

- a. In Zones A1-30, AE and AH, have the lowest floor (including basement or cellar) elevated to or above the base flood elevation.
- b. In all areas of special flood hazard, have fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or architect or meet or exceed the following minimum criteria:
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; and
 - ii. The bottom of all such openings no higher than one foot above the lowest adjacent finished grade.
 - iii. Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.
- c. Within any AO Zone, have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM [at least two feet if no depth number is specified].
- d. Within any A Zone, when no base flood data are available, have the lowest floor elevated at least three feet above the highest adjacent grade.

2. Paragraph B

When the Local Administrator has determined that the flood depth, measured from the base flood elevation to the original grade, is five feet or less for developable lots that are contiguous to land above the base flood level and three feet or less for other lots; and where the flood velocities are five feet per second or less; the local Administrator may issue building permits for residential structures containing basements in Zones A1-30, AH, AO or AE, provided that such structures shall:

- a. Be designed and built so that any basement area together with attendant utilities and sanitary facilities below the floodproofed design level, is watertight with walls that are impermeable to the passage of water without human intervention. Basement walls shall be built with the capacity to resist hydrostatic and hydrodynamic loads and the effects of buoyancy resulting from flooding to the floodproofed design level, and shall be designed so that minimal damage will occur from floods that exceed that level. The floodproofed design level shall be an elevation one foot above the level of the base flood where the difference between the base flood and the five-hundred-year flood is three feet or less and two feet above the level of the base flood where the difference is greater than three feet.
- b. Have the top of the floor of any basement area no lower than five feet below the elevation of the base flood.
- c. Have the area surrounding the structure on all sides filled to or above the elevation of the base flood. Fill must be compacted with slopes protected by vegetative cover.
- d. Have a registered professional engineer or architect develop or review the building's structural design specifications and plans, including consideration of the depths, velocity and duration of flooding and type and permeability of soils at the building site, and certify that the basement design and methods of construction proposed are in accordance with accepted standards of practice for meeting the provisions of this subsection.
- e. Be inspected by the building inspector or other authorized representative of the community to verify that the structure is built according to its design and those provisions of this Section which are verifiable.

B. Manufactured Homes and Recreational Vehicles

1. A manufactured home that is placed or substantially improved on a site in an A1-30, AE or AH Zone that is either:
 - a. Outside of a manufactured home park or subdivision;
 - b. In a new manufactured home park or subdivision as herein defined in § 2-1;
 - c. In an expansion to an existing manufactured home park or subdivision as herein defined; or
 - d. In an existing manufactured home park or subdivision as herein defined on which a manufactured home has incurred substantial damage as the result of a flood; shall be elevated on a permanent foundation such that the lowest floor is elevated to or above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

2. A Manufactured home to be placed or substantially improved on a site located in an A1-30, AE or AH Zone, in a manufactured home park or subdivision, as herein defined, that is not subject to the provisions of paragraph (1) above, shall be elevated so that either:
 - a. The lowest floor of the manufactured home is at or above the base flood elevation; or
 - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately anchored foundation system.
3. New construction or substantial improvements of manufactured homes in Zone A, where no base flood elevation data are available, shall be elevated at least three feet above the highest adjacent grade.
4. All recreational vehicles placed on-site for longer than 180 consecutive days and not fully licensed and ready for highway use must be elevated in accordance with (1), (2) or (3).
5. Manufactured homes and recreational vehicles, on-site for longer than 180 consecutive days, with fully enclosed areas below the lowest floor, must meet the requirement of either paragraphs A(1)(b)(ii) or A(2).

C. Nonresidential Construction

1. In Zones A1-30, AE and AH, new construction and substantial improvements of any commercial, industrial or other nonresidential structure, together with attendant utility and sanitary facilities, shall either:
 - a. Have the lowest floor (including basement or cellar) elevated to or above the base flood elevation; or
 - b. Be floodproofed so that the structure is watertight below the base flood level with walls substantially impermeable to the passage of water. All structural components located below the base flood level must be capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
2. In an AO Zone, all new construction and substantial improvement shall have the lowest floor (including basement) elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM [at least two feet if no depth number is specified].
3. In an A Zone, when no base flood data are available, have the lowest floor elevated at least three feet above the highest adjacent grade.
4. If the structure is to be elevated, fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically (without human intervention) equalize hydrostatic forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a licensed professional engineer or a licensed architect or meet the following criteria:
 - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

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- b. The bottom of all such openings shall be no higher than one foot above the lowest adjacent finished grade; and
 - c. Openings may be equipped with louvers, valves, screens or other coverings or devices provided they permit the automatic entry and exit of floodwaters.
5. If the structure is to be floodproofed: A licensed professional engineer or architect shall develop and/or review structural design, specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of paragraph § 7-7-8C(1)(b), including the specific elevation (in relation to mean sea level) to which the structure is floodproofed.
 6. The Local Administrator shall maintain on record a copy of all such certificates noted in this Section.

Sec. 6.6.9. Floodways

Located within areas of special flood hazard are areas designated as floodways (see § 2-4). The floodway is an extremely hazardous area due to high-velocity floodwaters carrying debris and posing additional threats from potential erosion forces. When floodway data is available for a particular site as provided by § 7-7-5 or, when applicable, § 7-7-6C(2), all encroachments, including fill, new construction, substantial improvements and other development, are prohibited within the limits of the floodway unless a technical evaluation demonstrates that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

Sec. 6.6.10. Variance Procedure

A. Appeals Board

1. The ZBA, as established by the Town of Amherst, shall hear and decide appeals and requests for variances from the requirements of this Section.
2. The ZBA shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Local Administrator in the enforcement or administration of this Section.
3. Those aggrieved by the decision of the ZBA may appeal such decision to the Supreme Court pursuant to Article 78 of the Civil Practice Law and Rules.
4. In passing a floodplain variance, the ZBA shall consider all technical evaluations, all the relevant factors, all the standards specified in this Section and:
 - a. The danger that materials may be swept onto other lands to the injury of others;
 - b. The danger to life and property due to flooding or erosion damage;
 - c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - d. The importance of the services provided by the proposed facility to the community;
 - e. The necessity to the facility of a waterfront location, where applicable;

- f. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - g. The compatibility of the proposed use with existing and anticipated development;
 - h. The relationship of the proposed use to the Comprehensive Plan and floodplain management program of that area;
 - i. The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - j. The costs to local governments and the dangers associated with conducting search and rescue operations during periods of flooding;
 - k. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
 - l. The costs of providing governmental services during and after flood conditions, including search and rescue operations, maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and street and bridges.
5. Upon consideration of the factors of paragraph (4) above and the purposes of this Section, the ZBA may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Section.
 6. The Local Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Emergency Management Agency upon request.

B. Conditions for Variances

1. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half of an acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in paragraph (4) above have been fully considered. As the lot size increases beyond the one-half of an acre, the technical justification required for issuing the variance increases.
2. Variances may be issued for the repair or rehabilitation of historic structures upon determination that:
 - a. The proposed repair or rehabilitation will not preclude the structure's continued designation as an historic structure; and
 - b. The variance is the minimum necessary to preserve the historic character and design of the structure.
3. Variances may be issued by the Town for new construction and substantial improvement and for other development necessary for the conduct of a functionally dependent use, provided that:
 - a. The criteria of paragraphs (1), (4), (5) and (6), of this subsection are met; and
 - b. The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threat to public safety.

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4. Variances shall not be issued within any designated floodway if an increase in flood levels during the base flood discharge would result.
5. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
6. Variances shall only be issued upon receiving written justification of:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship to the petitioner; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense or create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
7. Any petitioner to whom a variance is granted for a building with the lowest floor below the base flood elevation shall be given written notice over the signature of a community official that the cost of flood insurance will be commensurate with the increased risk resulting from lowest floor elevation.

DIV. 6.7. SIGNS

Sec. 6.7.1. Purpose

Sign regulations, including provisions to control the type, design, size, location, motion, illumination and maintenance, are designed to achieve the following purposes:

- A. To protect property values, create a more attractive economic and business climate and protect the physical appearance of the community from the effects of inharmonious and out-of-scale signs.
- B. To preserve the scenic and natural beauty of designated areas and provide a more enjoyable and scenic community.
- C. To reduce signs or advertising distractions or obstructions that may contribute to traffic accidents.
- D. To provide reasonable, yet appropriate, conditions for advertising goods sold or services rendered in business districts by relating the size, type and design of signs to the type of establishment.
- E. To control signs so that their appearance will be aesthetically harmonious with the overall design of the area.
- F. To reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way.
- G. To curb the deterioration of natural beauty in the community's environment.

Sec. 6.7.2. Prohibited Signs

All signs not expressly permitted or exempt from regulation under this Section are prohibited in all districts. Such signs include, but are not limited to:

- A. Banners, posters, pennants, ribbons, streamers, spinners or other similar moving, fluttering or revolving devices or strings of lights are prohibited.
- B. Rotating or revolving signs;
- C. Beacons;
- D. Any sign mounted, attached or painted on a trailer, boat, or motor vehicle when parked, stored, or displayed conspicuously on the public right-of-way or private premises in a manner intended to attract attention of the public for advertising purposes. If on-site parking is available, such vehicles must be parked to the interior side yard or rear yard of the building, or in a location as directed by the Commissioner of Building. This provision expressly excludes business signs that are permanently painted on, or magnetically attached to, motor vehicles or rolling stock that are regularly and consistently used to conduct normal business activities.
- E. Signs, as regulated by this Ordinance, used to attract attention to an object, product, place, activity, institution, organization or business not available or located on the premises where the sign is located, unless part of a unified development and a coordinated sign plan is approved.
- F. Signs advertising or identifying a business which is no longer operating. Any sign accessory or incidental to a business shall be removed within 30 days after the business ceases to operate;

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- G. Roof signs placed, inscribed or supported upon or above the highest part of the roofline except such directional devices as may be required by the FAA;
- H. Signs that create a traffic hazard by obstructing the view at any street intersection or by design resemblance through color, shape or other characteristics common to traffic control devices;
- I. Signs that encroach into the clear sight triangle as described in § 2-5-1;
- J. Signs in the public right-of-way or on other public property; and
- K. Advertising signs on cart corrals.

Sec. 6.7.3. **Signs Exempt from Regulation**

A. **Exempt Signs**

The following signs shall be exempt from regulation under this Section and shall not require a building permit for a sign as described in § 8-10.

1. Signs erected and maintained pursuant to and in discharge of any governmental function;
2. Signs prohibiting trespassing;
3. Integral, decorative or architectural features of building, except letters or trademarks;
4. Any sign inside a building, not attached to a window or door, that is not legible from a distance of more than three feet beyond the lot line of the lot or parcel on which such sign is located; and
5. Temporary signs proposed by civic or non-profit groups in conjunction with a Town Board resolution permitting a limited activity.

B. **Signs Not Requiring a Permit**

The following signs shall be exempt from regulation under this Section and shall not require a building permit for a sign as described in § 8-10, provided that the sign meets the additional standards given below.

SIGNS NOT REQUIRING A PERMIT

SIGN TYPE/DEFINITION/STANDARDS

ILLUSTRATION

ADDRESS SIGN

A sign that identifies the occupant and address of a residential structure.

Standards:

1. There shall be only one address sign indicating the name and address of the occupants of a dwelling.
 2. Such sign shall not exceed two square feet in area.
 3. Such sign shall not be internally illuminated.
-

SIGNS NOT REQUIRING A PERMIT

SIGN TYPE/DEFINITION/STANDARDS

ILLUSTRATION

CONSTRUCTION SIGN

Any freestanding sign intended to provide information about current construction on a site and the parties involved in the project.

Standards

1. There shall be only one on-premises construction sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies and officials.
2. Such sign shall not exceed 32 square feet in area.
3. Such sign shall be a maximum of 15 feet in height.
4. Such sign shall be located a minimum of 25 feet from the lot line and 75 feet from any dwelling not within the project.

FUEL PUMP SIGN

A sign attached to a fuel pump advertising the cost of fuel.

Standards:

1. The total area of fuel pump signs shall not exceed one square foot per pump.
2. Operational and payment instructions on the face of the pump shall be exempt from this limitation.

HANGING SIGN

A sign that hangs perpendicular to a building wall and is supported by or attached to the underside of a structure canopy, covered entrance or walkway, awning or marquee.

Standards:

1. Only one hanging sign shall be permitted per customer entrance.
2. The bottom edge of such signs shall be located a minimum of eight feet above the finished grade.
3. Such sign shall not exceed two square feet in area.
4. Such sign shall have a maximum vertical dimension of 18 inches.

HOME OCCUPATION SIGN

A sign attached to the wall of a permitted home-based business.

Standards:

1. There shall be only one non-illuminated home occupation sign that is physically attached to the exterior wall of the dwelling.
2. Such sign shall not exceed two square feet in area.
3. The home occupation with which the sign is associated shall meet the requirements of § 6-8-6.

INCIDENTAL SIGN

A sign that includes information assisting in the flow of vehicular traffic.

Standards:

1. Incidental signs shall not exceed two square feet in area.
2. Such sign shall be used to direct and guide traffic and parking on private property.
3. Such sign shall not bear any advertising.

<p>SIGNS NOT REQUIRING A PERMIT</p> <p>SIGN TYPE/DEFINITION/STANDARDS</p>	<p>ILLUSTRATION</p>
<p>POLITICAL SIGN</p> <p>A temporary sign that supports or opposes any political candidate, political issue, political referendum or political party.</p> <p>Standards:</p> <ol style="list-style-type: none"> 1. Political signs shall be placed only on private property. 2. Such signs shall not block any intersection clear sight triangle. 3. Such signs shall be removed within seven days after an election. 	
<p>REAL ESTATE SIGN</p> <p>A temporary sign that advertises the sale or lease of the premises on which it is located.</p> <p>Standards:</p> <ol style="list-style-type: none"> 1. There shall be only one on-premises real estate sign for each building or lot advertising the sale, rental or lease of the premises on which the sign is displayed. 2. Such sign shall not be illuminated. 3. Such sign shall be removed within 15 days after property closing or lease signing. 4. Such sign shall not exceed eight square feet per face in residential districts. 5. Such sign shall not exceed 32 square feet in area in nonresidential districts. 6. One additional real estate sign shall be allowed on a site abutting more than one roadway. 	
<p>WINDOW SIGN</p> <p>A temporary, non-structural sign located in the interior of a window or door or any other sign inside the building containing a message legible from the public right-of-way or adjacent property clearly intended for public recognition outside the building.</p> <p>Standards:</p> <ol style="list-style-type: none"> 1. No window sign or advertising poster shall occupy more than 20 percent of the area of an individual window pane. 	

Sec. 6.7.4. **Signs Requiring a Permit**

Upon issuance of a building permit for a sign in accordance with § 8-10, Building Permit for Signs, the following signs shall be permitted subject to the following requirements.

SIGNS REQUIRING A PERMIT SIGN TYPE/DEFINITION/STANDARDS	ILLUSTRATION
BUILDING SIGN TYPES	
AWNING SIGN	
A sign painted on, attached to or otherwise displayed on an awning. This sign type does not include canopies over gas pumps.	
Standards:	
<ol style="list-style-type: none"> No such signs shall exceed 20 percent of the area of each awning or canopy (top plus all sides). Backlit awnings are not permitted per § 4-8-6F(4)(d)(ii) of this Ordinance. 	
For awning signs in the LW-1 district, see § 5-8-4C.	
MARQUEE SIGN	
A sign attached to the face of a marquee and not projecting above or beneath said marquee face. A marquee is a permanent roof-like structure that projects from the wall of a building and may overhang the public way.	
Standards:	
<ol style="list-style-type: none"> No more than one marquee sign shall be permitted for each building frontage that includes an entrance serving the general public. Such sign shall not extend beyond the top or sides of the building. Such sign shall not be oriented toward any residential district. Such signs shall not project into any adjacent right-of-way, unless approved by the appropriate federal, state, county, or local highway official. The bottom of such signs shall be a minimum of eight feet above the walkway. 	
MENU BOARD SIGN	
A permanently mounted sign displaying the bill of fare for a drive-through or drive-in restaurant.	
Standards:	
<ol style="list-style-type: none"> The text of the sign shall not be legible from the public right-of-way or any adjacent residential district. There shall be a maximum of two menu board signs per drive through lane. Each menu board sign shall not exceed 36 square feet in area. The area devoted to menu board signs shall not be counted toward the total sign allotment for the restaurant. 	

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SIGNS REQUIRING A PERMIT**SIGN TYPE/DEFINITION/STANDARDS****ILLUSTRATION****PROJECTING SIGN**

A sign attached perpendicular to a building or other structure. This definition shall not include hanging signs.

Standards:

1. Only one projecting sign is permitted per building frontage with an entrance available to the general public.
2. Such sign shall not exceed 16 square feet per side.
3. Such signs shall not project into any adjacent right-of-way, unless approved by the appropriate federal, state, county, or local highway official.
4. The bottom of such signs shall be a minimum of eight feet above the walkway.

WALL SIGN

A sign integral with or attached to and supported by the exterior wall of a building.

Standards:

1. Wall signs shall not be placed over glazed areas.
2. A wall sign shall not project above or beyond the ends of the building or its parapet or the highest point of the roof, whichever is higher.
3. Such sign shall not project more than 12 inches from the exterior supporting wall.
4. On a multi-occupancy building, each occupant with an outside entrance serving the general public may have a separate wall sign. Corner tenants with a second outside entrance in a side wall shall be allowed one additional wall sign.
5. Such sign shall have a maximum area in accordance with the table in § 7-8-8A.
6. In the R-R, S-A and AG districts, a wall sign may be used in connection with a roadside stand to advertise the sale of produce on farms within this district, provided that the produce being sold is produced on the farm or by the occupant of the farm. The sign face area shall not exceed 32 square feet. The sign shall be removed when the roadside stand is not in use.
7. ~~For wall signs in the LW-1 district, see § 5-8-4C.~~

FREESTANDING SIGN TYPES

SIGNS REQUIRING A PERMIT

SIGN TYPE/DEFINITION/STANDARDS

ILLUSTRATION

GROUND SIGN

A sign supported by uprights or braces placed upon or in the ground and not attached to any building.

Standards:

1. One ground sign shall be permitted for each individual building not a part of a multiple development.
2. For properties where a pole sign is permitted, a ground sign may be placed along the same street frontage as that of the pole sign provided that the ground sign is 250 feet from the pole sign and meets all other applicable regulations of this ordinance, or a ground sign may be placed along each other non-local street frontage.
3. Such sign shall be no higher than eight feet above the average finished grade and shall be permanently attached to the ground.
4. Such sign shall not exceed 160 square feet in total face area. The size of any single face shall not exceed 50 percent of the total area permitted.
5. Such sign shall be located a minimum of 25 feet from any nonresidential lot or 50 feet from any residential lot, 15 feet from a street right-of-way, and not within the clear vision triangle as described in § 2-5-1.
6. At each location where motor vehicle fuels are sold at retail, 32 square feet of additional face area limited to advertising the brand name and price of the fuel shall be permitted. This area may be used for a separate ground sign or as an addition to the face area of a ground sign otherwise permitted in this Section. In no event shall more than 16 square feet of this allowed area be displayed or added to any single face area.
7. In the R-R, S-A and AG districts, a ground sign may be used in connection with a roadside stand to advertise the sale of produce on farms within this district, provided that the produce being sold is produced on the farm or by the occupant of the farm. The sign face area shall not exceed 32 square feet. The sign shall be removed when the roadside stand is not in use.
8. The base shall be no less than 75 percent of the width of the sign.
9. ~~For ground signs in the LW-1 district, see § 5-8-4C.~~

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SIGNS REQUIRING A PERMIT

SIGN TYPE/DEFINITION/STANDARDS

ILLUSTRATION

MESSAGE CENTER SIGN

A sign supported by uprights or braces placed upon or in the ground and not attached to any building which contains an illuminated, programmable message or graphic, whether fixed or moving.

Standards:

1. Message center signs may only be included as a part of a permitted freestanding sign.
2. Message center signs are not permitted in the - TNB, PRD, PDD or TND overlay districts or on any parcel within 500 feet of a residential district.
3. The information displayed on a message center sign for advertisement purposes shall remain static for a period of no less than ten minutes. The display of time and temperature information may change at no less than one minute intervals.
4. The transition between successive messages shall be instantaneous and shall not contain such visual effects as fading, dissolve, flashing, or animation.
5. Each message displayed shall be complete in itself, without continuation in content to the next message or to any other sign.
6. All message center signs shall be equipped with manual and automatic dimming devices which the Commissioner of Building shall regulate in accordance with § 7-8-5.

SIGNS REQUIRING A PERMIT

SIGN TYPE/DEFINITION/STANDARDS

ILLUSTRATION

POLE SIGN

A sign that is mounted on a freestanding pole or other support so that the bottom edge of the sign face is a minimum of eight feet above the finished grade of a paved walk, drive, or parking area.

Standards:

1. One pole sign for each individual building not part of a multiple development shall be permitted in the General Business (GB), Commercial Service (CS) and Motor Service (MS) districts; or one pole sign for each multiple development in the General Business (GB) or Shopping Center (SC) districts.
2. Such sign shall not exceed 25 feet in height.
3. Such sign shall be located a minimum of 50 feet from an adjacent residential lot line.
4. Such sign shall not project over any public right-of-way or lot line.
5. The pole support for such signs shall be fully encased or skirted. A sign with a single support shall have a minimum support width of 30 percent and a maximum support width of 50 percent of the width of the sign face. Each support for a sign with double supports shall be a minimum of 15 percent and a maximum of 25 percent of the width of the sign.
6. For a sign support that exceeds 50 percent of the width of the sign face, the sign shall be located a minimum of 25 feet from any nonresidential lot or 50 feet from any residential lot, 15 feet from a street right-of-way, and not within the clear vision triangle as described in § 2-5-1.
7. For properties with multiple non-local street frontage, one pole sign is permitted. A ground sign may be placed along each other non-local street frontage.
8. At each location where motor vehicle fuels are sold at retail, 32 square feet of additional face area limited to advertising the brand name and price of the fuel shall be permitted. This area may be used for a separate ground sign or as an addition to the face area of a ground or pole sign otherwise permitted in this Section. In no event shall more than 16 square feet of this allowed area be displayed or added to any single face area.

SIGNS REQUIRING A PERMIT

SIGN TYPE/DEFINITION/STANDARDS

ILLUSTRATION

SUBDIVISION IDENTIFICATION SIGN

A sign indicating the name of the subdivision or residential development.

Standards:

All Permitted Districts

A subdivision or residential development identification sign shall be maintained in good repair by a homeowners association.

Such sign shall be located on private property a minimum of 15 feet from any lot line and not in a clear vision triangle as described in § 2-5-1.

Single-Family Districts

1. One non-internally illuminated permanent subdivision identification sign may be permitted for each side of a subdivision or residential development entryway.
2. Such sign shall not exceed 32 square feet in area and eight feet in height.

Multifamily Districts

1. One non-internally illuminated permanent identification sign may be permitted at each entrance to the development.
2. Such sign shall not exceed 20 square feet in area and six feet in height.

MISCELLANEOUS SIGN TYPES

DIRECTORY SIGN

A sign or group of signs attached to a building or freestanding which identifies or directs traffic to the business, owner, address, or occupation of a group of businesses.

Standards:

1. Only one directory sign shall be permitted at each entrance, and one additional directional sign elsewhere on the premises, unless approved as part of a coordinated sign plan.
2. No such sign shall exceed 16 square feet in area and 8 feet in height.
3. Additional internal directory signs not visible from the street may be permitted as part of a master sign plan.
4. Such sign may contain business names with arrows or other directional information.

Sec. 6.7.5. **Sign Lighting Standards**

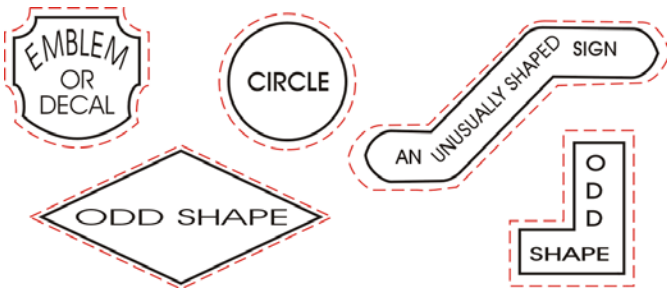
- A. Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and no sign shall be illuminated by or contain flashing, intermittent, rotating or moving light or lights.
- B. In no event shall any illuminated sign or lighting device be placed so as to permit its beams and illumination to be directed upon a public street, highway, sidewalk or adjacent premises so as to cause glare or reflection that may constitute a traffic hazard or nuisance.
- C. The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced.

Sec. 6.7.6. **Sign Area Computation**

The following principles shall control the computation of sign area and sign height.

A. **Computation of Area of Individual Signs**

1. The area of a sign face shall be computed as the area of the smallest square, circle, rectangle, or triangle that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color determined by the Commissioner of Building to form an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed. The supporting structure or bracing of a sign shall be omitted in measuring the area of the sign unless such structure or bracing is made part of the message or face of the sign.



2. Where a sign consists of individual letters, words or symbols attached to a surface, building, canopy, awning or wall, the sign area shall be the area of the smallest rectangle which completely encompasses all such letters, words or symbols and any accompanying background of a color different than the color of the wall.



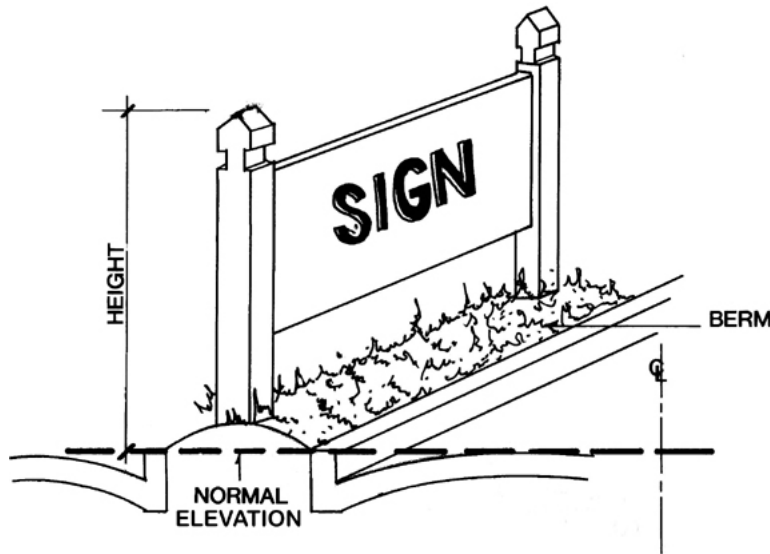
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B. Computation of Area of Multi-Faced Signs

The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces. When two identical sign faces are placed back to back, the size of any single face shall not exceed 50 percent of the total area permitted.

C. Computation of Height

The height of a sign shall be computed as the mean distance from the base(s) of the sign at finished grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign.



Sec. 6.7.7. Permitted Signs Table

Need to match to new districts

SIGN TYPE	RESIDENTIAL DISTRICTS	BUSINESS DISTRICTS*	INDUSTRIAL DISTRICTS	ALL OTHER DISTRICTS
SIGNS NOT REQUIRING A PERMIT				
Address sign	Yes	Yes	Yes	Yes
Construction sign	Yes	Yes	Yes	Yes
Incidental sign		Yes	Yes	Yes
Fuel pump sign		Yes	Yes	Yes
Home occupation Sign	Yes			Yes
Political sign	Yes	Yes	Yes	Yes
Real estate sign	Yes	Yes	Yes	Yes
Window sign		Yes	Yes	Yes
SIGNS REQUIRING A PERMIT				
Building Signs		Yes	Yes	Yes
Awning sign		Yes	Yes	Yes
Fascia sign		Yes	Yes	Yes
Hanging sign		Yes	Yes	Yes
Marquee sign		Yes	Yes	Yes
Projecting sign		Yes	Yes	Yes
Wall sign		Yes	Yes	Yes
Menu Board		Yes		
Freestanding Signs				
Ground sign		Yes	Yes	Yes
Message center sign		Yes***		Yes***
Pole sign		Yes**		Yes**
Subdivision identification sign	Yes			
Miscellaneous Signs				
Directory sign		Yes	Yes	Yes

~~*In the SC district, in addition to the pole sign described in § 7-8-4, only wall, ground, hanging, fascia, and permanent changeable letter signs shall be permitted.~~

~~** Pole signs are not permitted in the OB, NB, or TNB overlay districts.~~

~~*** Message center signs are not permitted in the TNB, PRD, PDD or TND overlay districts or within 500 feet of a residential district.~~

~~Ground, wall and awning signs only are permitted in the LW-1 District.~~

Sec. 6.7.8. **Permitted Sign Area**

A. **All Signs**

The maximum area of all signs, excluding those that are exempt, shall be related to the height of the building above the finished grade and the length of the wall of the building facing the nearest street. The total maximum face area for all signs shall not exceed X square feet per linear foot of building frontage where X equals the values in the following table. Lots fronting on two or more streets are allowed to calculate all street frontages into the allowable allocation. The allowance included in the prior sentence shall not be applicable to any Controlled Access Highway as detailed in § 120-5 of the Code of the Town of Amherst or any other street where vehicular access is not permitted including, but not limited to, the New York State Thruway (I-90), the Youngmann Expressway (I-290) and the Lockport Expressway (I-990).

SIGN AREA (SQUARE FEET) PER LINEAR FOOT			
District	Under 2 Stories	2 Stories	Over 2 Stories
RD, ST, GI	1.00	1.25	1.50
GB, SC	2.00	2.00	2.00
MS, CS	1.50	1.75	2.00
NB, OB	0.75	1.00	1.25
CF	0.50	0.50	0.50
LW-1	12 sq. ft. maximum (see § 5-8-4C)		

B. **Pole Signs**

The maximum total face area for a pole sign shall be determined by the street frontage of the lot. Where the lot fronts on more than one street, the frontage shall be the length of the longest side. The size of any single face shall not exceed 50 percent of the total area permitted.

STREET FRONTAGE (FEET)	TOTAL FACE AREA (SQUARE FEET)
Under 200	64
200 to 349	96
350 to 499	128
500 to 750	160
Over 750	192

C. **Public/Civic Use in Residential District**

A permitted public and civic use located in a residential district shall be allowed a maximum of 32 square feet of total sign area. Ground and wall signs shall be permitted and shall not contain a message center sign. Such signs shall be located a minimum of 25 feet from any lot line.

Sec. 6.7.9. **Signs in Multiple Developments**

A. A Coordinated Sign Plan shall be required for all existing and newly proposed multiple developments as defined in § 2-4 and in accordance with § 8-11.

- B. All signs in a multiple development shall conform to the approved Coordinated Sign Plan on file with the Town. It shall be the responsibility of the owner of the development to ascertain that the most updated version is on file for purposes of this Ordinance.
- C. Building permits for signs for individual businesses within multiple developments shall be approved by the Commissioner of Building, following Coordinated Sign Plan approval.
- D. No owner, tenant or other user of a multiple development may erect, permit to be erected, or use any sign deviating from or not included within the approved coordinated sign plan.

Sec. 6.7.10. **Temporary Signs**

- A. Exterior portable or temporary signs shall be limited to a maximum sign area of 32 square feet per face and erected, used or maintained only after obtaining a temporary building permit for a sign in accordance with § 8-10. A temporary building permit for a sign shall be issued for the following purposes only:
 - 1. New business enterprises for a period not exceeding 30 days;
 - 2. Celebration of the first anniversary date of a new business enterprise for a period not exceeding 30 days;
 - 3. Business enterprises which have lost the use of an existing sign by reason of fire or other catastrophe, for a period not exceeding 30 days;
 - 4. To replace a conforming or legally nonconforming sign during construction activities related to public improvements that has been removed in order to improve the public right-of-way, the time limitation of which shall be established by the Commissioner of Building;
 - 5. Limited activities in connection with the principal use or activity on the premises, for a period not exceeding seven days; or
 - 6. Signs advertising the price of merchandise displayed outdoors, not exceeding 24 square feet in face area.
- B. No more than two temporary building permits for signs shall be issued within any calendar year for any business on the premises. Temporary signs shall not be allowed within multiple developments as defined in § 2-4, except as provided in 7-8-10A(1), (2) and (3).

Sec. 6.7.11. **Construction and Maintenance of Signs**

Every sign shall at all times be in a safe and structurally sound condition and maintained by replacement of defective or worn parts, painting, repainting and cleaning. The Commissioner of Building shall require compliance with all standards of this Ordinance. If the sign does not comply with adequate safety standards, it shall be removed.

A. **Abandoned Signs**

Except as otherwise provided in this Ordinance, any sign which is located on property which becomes vacant and unoccupied for a period of three consecutive months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Permanent signs applicable to a business temporarily suspended because of a change

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of ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of six months or more. An abandoned sign is prohibited and shall be removed by the owner of the sign or owner of the premises. Failure to remove an abandoned sign shall be a violation of this Ordinance.

B. Dangerous or Hazardous Signs

1. No person shall maintain or permit to be maintained on any premises owned, occupied or controlled by such person any sign which is either not structurally sound or creates an electrical hazard. Any such sign shall be removed or repaired by the owner or user of the sign or the owner of the premises.
2. Overhead wires or exposed wires on a sign or its supporting members are prohibited.

C. Unlawful Signs

No person shall erect on any premises owned or controlled by such person or use any sign which does not comply with the provisions of this Ordinance.

D. Street Improvement Projects

Any sign projecting over a public right-of-way which was subject to removal or relocation at the owner's expense, pursuant to a permit or other ordinance of the town, shall be removed by the owner or altered at the owner's expense to comply with the regulation of this Ordinance if, as the result of or after completion of a street improvement project, the sign does not or would not comply with the provisions of this Section.

Sec. 6.7.12. Coordinated Sign Plan

- A. The purpose of a Coordinated Sign Plan is to detail the standards for uniformity to which the development proposes to conform, and to state the manner in which the design criteria and standards for uniform signage are in compliance with these regulations.
- B. Signs shall be designed to be integrated with the design and architectural character of the building and be compatible with the surroundings in which they are placed.
- C. Sign panels and graphics shall relate to, be in proportion to and not cover architectural features. Raceway cabinets, where used as an element of building mounted signs, shall match the color at the location of the building where the sign is located.
- D. Signs shall be appropriate to the types of activities they represent.
- E. The layout of signs shall be orderly and graphics shall be of simple shape, such as rectangle, circle or oval and consistent throughout a multiple development.
- F. The number of different fonts shall be kept to a minimum and should be selected to provide for clarity and artistic integrity. If a tenant does not have a company logo, the font used shall be consistent with the font common to the overall development.
- G. The number of colors used for signs shall achieve a harmonious appearance throughout the development and be the minimum necessary to be consistent with the overall design.

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- H. The materials used in the composition of the signs should be compatible with building facades and should contribute to the legibility of the signs.
- I. The illumination of signs shall be appropriate to the character of the sign, its surroundings and generally consistent throughout the development. Illumination shall be of constant intensity, duration, with the light source (excluding neon) shielded and where applicable directed solely onto the sign(s).
- J. Groups of related signs shall express uniformity and create a sense of harmonious appearance.
- K. The orientation of signs should be consistent throughout the development.
- L. The number and content of signs shall be no more than is necessary to provide reasonable identification of the businesses within a multiple development.
- M. The size, location, and type of signs shall be consistent on the facades of buildings and faces of free standing signs, except for:
 - 1. Company logos; and
 - 2. Designated anchors that may have signage that varies from secondary tenants provided that signage is generally consistent with the overall architecture and signage of the development.

DIV. 6.8. PERFORMANCE STANDARDS

Sec. 6.8.1. **In General**

Any use shall comply with the performance standards set forth below. Any use already established in such districts shall not be altered, added to or otherwise modified so as to conflict with, or further conflict with, the performance standards set forth below for the district in which such use is located. The Town may select and arrange for an independent survey by a person qualified in the particular field to determine whether or not any structure or use complies with the performance standards and the costs for the services shall be paid by the owner or user.

Sec. 6.8.2. **Standards**

A. **Incineration Facilities**

All incineration facilities shall be enclosed within an approved structure and shall be provided with devices for prevention of emission of smoke, odors, chemical or particulate matters and shall conform to the regulations of Part III, § 3.1 to and including § 3.15 of Bulletin 82, National Board of Fire Underwriters, or any applicable federal, state or county requirements. No garbage, rubbish, waste matter or empty containers shall be permitted outside of buildings.

B. **Dust-Smoke**

The emission of smoke, soot, fly ash fumes, dust and other types of air pollution borne by the wind shall be controlled so that the rate of emission and quantity deposited shall not be detrimental to or endanger the public health, safety, comfort, welfare or adversely affect property values.

C. **Glare and Heat**

Any operation producing intense glare or heat shall be conducted in such a manner so that the glare or heat shall be completely imperceptible from any point along a lot line.

D. **Fissionable, Radioactive or Electrical Disturbance**

No activities shall be permitted which utilize fissionable or radioactive materials if their use results at any time in the release or emission of any fissionable or radioactive material into the atmosphere, the ground or sewerage systems, and no activities shall be permitted which emit electrical disturbance affecting the operation of any equipment other than that of the creator of such disturbance.

E. **Odorous Matter**

The emission of odorous matter in such quantities as to produce a public nuisance or hazard beyond the lot occupied by the use shall not be permitted.

F. Toxic or Noxious Matter

The emission of toxic, noxious or corrosive fumes or gases which would be injurious to property, vegetation, animals or human health at or beyond the boundaries of the lot occupied by the use shall not be permitted.

G. Vibration

Every use shall be so operated that the ground vibration inherently and recurrently generated by said use is not perceptible without instruments, at any point along any property line of the lot on which the use is located.

H. Bird Hazards

In order to reduce bird hazards to air traffic in the vicinity of the Greater Buffalo Niagara International Airport, all buildings hereafter constructed in the area of the town east of the Village of Williamsville and south of Wehrle Drive shall be designed so as to eliminate water standing on the roofs. No roof shall be colored black.

DIV. 6.9. **COMBUSTIBLE/FLAMMABLE LIQUIDS**

Sec. 6.9.1. **Bulk Storage of Combustible/Flammable Liquids**

All bulk combustible liquids over 660 gallons in residential districts, and 1,000 gallons in all other districts; or flammable liquids over a temporary portable tank storage of 660 gallons, shall be stored underground per the National Fire Protection Association Pamphlet #30. Any above ground tank installed shall be protected from leaks and or spills by a double wall storage tank or proper diking, per the national Fire Protection Association Pamphlet #30. The Commissioner of Building shall have discretionary authority to approve larger aboveground storage facilities in accordance with National Fire Protection Association standards. In accordance with the requirements of § 7-4-3C, all tanks installed above ground shall be completely screened from any public right-of-way.

PART 7.

ADMINISTRATION

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DIV. 7.1. DEVELOPMENT REVIEW BODIES

Sec. 7.1.1. Town Board

A. Establishment

For the purpose of promoting the health, safety, morals, or the general welfare of the community, the Town Board is hereby empowered under § 261 of NYS Town Law to regulate and administer the provisions of this Zoning Ordinance.

B. Powers and Duties

The Town Board shall be responsible for final action regarding the following:

1. Amendments to the Zoning Map (rezoning);
2. Amendments to the text of this Ordinance;
3. Amendments to the Audubon Development Plan;
4. Open development areas in accordance with NYS Town Law § 280a(4);
5. Site plan review in the Bryant Woods development area; and
6. Relief of any restriction or action from any of the above.

Sec. 7.1.2. Planning Board

A. Establishment

The Planning Board is established under the provisions of § 271 of NYS Town Law.

B. Membership, Appropriations and Terms

The Planning Board shall consist of seven members and its composition, appropriations, terms, vacancies, removals, and appointments shall be in accordance with § 271 of NYS Town Law.

C. Power and Duties

The Planning Board shall have the following powers and duties.

1. Review Authority

The Planning Board shall be responsible for reviewing and making recommendations regarding the following:

- a. Amendments to the Zoning Map (rezoning);
- b. Amendments to the text of this Ordinance;
- c. Amendments to the Audubon Development Plan;
- d. Applications for review of open development areas;
- e. Site plan review in Bryant Woods development area; and

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- f. Relief from conditions or restrictions for actions taken under § 8-1-1B.

D. Final Authority

The Planning Board shall be responsible for final action regarding applications for major site plan review and relief from conditions or restrictions.

E. General Authority

The Planning Board may exercise additional powers as directed by the Town Board and as may be described elsewhere in this Ordinance and as permitted by NYS Town Law.

Sec. 7.1.3. Zoning Board of Appeals (ZBA)**A. Establishment**

The ZBA is established under the provisions of § 267 of NYS Town Law.

B. Membership, Appointments and Terms

1. The ZBA shall consist of five members appointed by the Town Board. The members of the ZBA as now constituted shall continue in office until the expiration of their present terms. Thereafter, their successors shall be appointed for a term of five years each. Vacancies shall be filled as provided for in the NYS Town Law.
2. The Town Clerk shall be the Clerk of the ZBA and shall perform such duties as required by it. The Town Board may appoint additional clerks or other employees serving at its pleasure to assist the ZBA.

C. Meetings

1. The ZBA shall adopt rules for the conduct of its business consistent with statute and this Ordinance.
2. The Chair of the ZBA, or in the Chair's absence the Acting Chair, may administer oaths and compel the attendance of witnesses in the manner and to the extent permitted by NYS Town Law and the Civil Practice Law and Rules.
3. The ZBA may seek recommendations from the Planning Board and other agencies as it deems appropriate.
4. Hearings shall be public, and decisions shall be voted upon at public sessions. The ZBA may otherwise hold executive sessions in accordance with the NYS Open Meeting Law.

D. Minutes

The Town Clerk shall keep minutes of all proceedings before the ZBA.

E. Powers and Duties

The ZBA shall have the following powers and duties.

1. Final Authority

The ZBA shall be responsible for final action regarding the following:

- a. Applications for variances;
- b. Administrative appeals;
- c. Applications for special use permits;
- d. Applications for temporary use permits;
- e. NYS Town Law § 280-a(3) appeal; and
- f. Amendments to restrictions enacted by the ZBA.

2. General Authority

The ZBA may exercise additional powers as directed by the Town Board and as may be described elsewhere in this Ordinance and as permitted by law.

Sec. 7.1.4. Zoning Enforcement Officer

A. Designation

The Zoning Enforcement Officer shall be responsible for administering the provisions of this Zoning Ordinance as may be required under § 8-1-4(2) C.

B. Delegation of Authority

The Zoning Enforcement Officer may designate any staff member to represent the Zoning Enforcement Officer in any function assigned by this Ordinance. The Zoning Enforcement Officer shall remain responsible for any final action.

C. Powers and Duties

The Zoning Enforcement Officer shall have the following powers and duties.

1. Review Authority

The Zoning Enforcement Officer shall be responsible for reviewing the following:

- a. Amendments to the Zoning Map (rezoning);
- b. Amendments to the text of the ordinance;
- c. Amendments to the Audubon Development Plan;
- d. Applications for review of open development areas (Appeal under §280-a(3) of NYS Town Law);
- e. Applications for major and minor site plan review;
- f. Variances;
- g. Applications for administrative appeal;
- h. Applications for special use permits;

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- i. Applications for temporary use permits;
- j. Coordinated sign plan review; and
- k. Restricted Parking Lots under § 7-1-9 B. (2) (b) of this ordinance.

2. Final Authority

The Zoning Enforcement Officer shall be responsible for final action regarding the following:

- a. Interpretation of district boundaries;
- b. Written interpretation of this Ordinance;
- c. Determination of similar uses.

D. General Authority

1. The Zoning Enforcement Officer may exercise additional powers as may be described elsewhere in this Ordinance and as permitted by NYS Town Law.
2. The Zoning Enforcement Officer shall perform related duties as directed by the Town Board.

E. Enforcement

1. This Ordinance shall be administered by the Zoning Enforcement Officer. The Zoning Enforcement Officer shall notify the Commissioner of Building when it has been determined that a violation of this Ordinance may exist.
2. The Zoning Enforcement Officer shall recommend to the Commissioner of Building discontinuance of uses of land, structures or construction of structures or additions, alterations or other structural changes which are in violation of this Ordinance or any other law. Nothing in this Section shall limit or restrict any other procedure provided for the enforcement of this Ordinance or other applicable law.

Sec. 7.1.5. Commissioner of Building

A. Designation

The Commissioner of Building shall be responsible for administering the provisions of this Zoning Ordinance as may be required under § 8-1-5C.

B. Delegation of Authority

The Commissioner of Building may designate any staff member to represent the Commissioner of Building in any function assigned by this Ordinance. The Commissioner of Building shall remain responsible for any final action.

C. Powers and Duties

The Commissioner of Building shall have the following powers and duties.

1. Review Authority

The Commissioner of Building shall be responsible for reviewing the following:

- a. Amendments to the Zoning Map (rezoning);
- b. Amendments to the text of the ordinance;
- c. Amendments to the Audubon Development Plan;
- d. Applications for review of open development areas;
- e. Applications for major and minor site plan review; and
- f. Applications for Coordinated Sign Plans.
- g. Applications for administrative appeal;
- h. Applications for special use permits;
- i. Applications for temporary use permits; and
- j. Coordinated sign plan review.

2. Final Authority

The Commissioner of Building shall be responsible for final action regarding the following:

- a. Applications for certificates of occupancy or compliance;
- b. Applications for floodplain development permits; and
- c. Applications for building permits.

3. General Authority

- a. The Commissioner of Building may exercise additional powers as may be described elsewhere in this Ordinance and as permitted by NYS Town Law.
- b. The Commissioner of Building shall perform related duties as directed by the Town Board.

4. Enforcement

- a. This Ordinance shall be enforced by the Commissioner of Building. Upon notice, the Commissioner of Building may enter any premises or building at a reasonable time to determine whether or not same is in violation of this Ordinance.
- b. The Commissioner of Building shall order discontinuance of uses of land, structures or construction of structures or additions, alterations or other structural changes which are in violation of this Ordinance or any other law. Nothing in this Section shall limit or restrict any other procedure provided for the enforcement of this Ordinance or other applicable law.

Sec. 7.1.6. **Summary of Review Authority**

The following table summarizes review authority under this Ordinance. Public hearing may be required in accordance with § 8-2-3.

[TABLE]

Sec. 7.1.7. ~~Review Authority for~~ **Sexually Oriented Businesses**

In addition to any and all other necessary licenses and permits, and in accordance with § 6-6-4, a certificate of registration is required for the operation of a sexually oriented business. The application for the certificate of registration is filed with the Town Clerk and reviewed by the Zoning Enforcement Officer and the Chief of Police. Upon receipt of determinations of compliance from these officials, the Town Clerk issues either an approval or denial of the application.

DIV. 7.2. REVIEW PROCEDURES

Sec. 7.2.1. Common Review Procedures

A. Pre-Application Conference

1. Before submitting an application for development approval, it is recommended that each petitioner schedule a pre-application conference with Zoning Enforcement Officer to discuss the procedures, standards and regulations required for development approval in accordance with the provisions of this Zoning Ordinance.
2. A pre-application conference shall be required for the modification of an existing development without a previously approved site plan.

B. Application Requirements

The following requirements shall apply to all applications for development review.

1. Who May Submit Applications

- a. All applications shall be reviewed by the Commissioner of Building, or Zoning Enforcement Officer, as applicable, for their signature prior to filing with the Town Clerk. The Town Clerk shall receive payment of the required fees.
- b. Applications shall only be accepted from persons having the legal authority to submit such applications. In general, applications shall be made by the owners or lessees of property, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary approval under this Zoning Ordinance.
- c. The Zoning Enforcement Officer or Commissioner of Building, as applicable, shall require a petitioner to present additional evidence of authority to submit the application.

2. Forms

- a. All application forms shall be available either from the Zoning Enforcement Officer or the Building Commissioner, as applicable. The content of such application forms shall be determined by the Zoning Enforcement Officer or the Building Commissioner, as applicable, and may be amended from time to time.
- b. Applications required under this Ordinance shall be submitted on forms and in such numbers as required by the Town.

3. Fees

- a. No application shall be accepted by the Town Clerk until all applicable fees, charges and expenses have been paid in full.
- b. Filing fees shall be established from time to time by resolution of the Town Board to defray the cost of processing the application.
- c. All required fees shall be made payable to the "Town of Amherst."

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- d. A petitioner who has paid an appropriate fee pursuant to the submission of an application, but who chooses to withdraw such application within 24 hours of application shall be entitled to a full refund upon written request to the Commissioner of Building or Zoning Enforcement Officer, as applicable. After this 24-hour period, the petitioner may petition the Town Board for a partial refund. The Town Board may request a recommendation on any request for a refund considered under this Section.

4. Acceptance of Applications for Review

- a. An application and fee will be accepted for review when it contains all information necessary to determine whether or not the development as proposed will comply with all of the requirements of this Ordinance, as determined by the Zoning Enforcement Officer or the Commissioner of Building. In addition, an application shall not be considered complete until a SEQR determination of significance under Town Code, Chapter 104, Environmental Quality Review, can be made.
- b. The presumption is that all of the information required in the Town's application forms is necessary to satisfy the requirements of this Section. However, it is recognized that each application is unique, and therefore more or less information may be required according to the needs of the particular case. The petitioner may rely on the recommendations of the Zoning Enforcement Officer or the Commissioner of Building, as applicable, as to whether more or less information should be submitted with the application.
- c. An application not considered complete within six months after the initial date of submittal shall be considered null and void, except where such application is part of an ongoing SEQR review.

C. Notice and Public Hearings

1. Public Notice Requirements

a. Published Notice

For the purpose of notifying the public of all public hearing agenda items which may be considered or reviewed, notice shall be published at least once in a newspaper having general circulation in the Town for a time period as required under SEQR.

b. Published Notice for Rezoning to a PRD District

The published notice of any public hearing scheduled to consider the creation of a PRD district shall state that the proposed development plan, with a list of all property ownerships within the district (listed by house number, name of owner, street name and tax number), and a map of the proposed district, showing proposed use classification areas and property lines of all parcels of land included in district areas, is available for public examination in the Office of the Town Clerk, prior to the public hearing and thereafter until such time as the Town Board shall act to approve or disapprove the creation of the district and shall describe any adjustments in any regulations, standards or criteria of this Ordinance.

2. Courtesy Notices

These notice provisions are not jurisdictional. Failure to provide any notice or to erect or maintain the sign or failure of the notice or sign to provide the information called for shall not affect the validity of any action taken by the ZBA, Planning Board and Town Board.

a. Mailed Notice

At least 10 days prior to the first public hearing, the Town Clerk shall give written notice by mail of the date, time and place of the public hearing and the street address or other identification of the property involved and a brief description of the action under consideration to each of the following:

- i. The owner of the property affected by the proposal, as shown by the records of the Town Assessor, and the petitioner for the action being sought, if other than the owner;
- ii. The owners of property located within 600 feet of the subject property, as shown by the records of the Town Assessor;
- iii. Any other person who has filed a written request for notice of applications for such proposals and paid the annual fee therefor, as fixed by resolution of the Town Board from time to time. Eligibility for notice under this subsection shall expire at the end of each calendar year; and
- iv. Any and all homeowners' or residents' associations or organizations registered with the Town Clerk having a geographical area within which the subject property is situated. Said associations or organizations shall define the geographical area they represent.

b. Posted Notice

At least 10 days prior to the first public hearing, the Town shall cause a two-foot by three-foot sign to be erected on the affected property, facing the nearest street, bearing the words "Zoning/Development Application Pending," together with a Planning Department telephone number to be called for additional information. The sign shall remain posted during the pendency of the application, to the conclusion of the final public hearing before the ZBA, Planning Board or Town Board as the case may be, or the earlier termination of the proposal.

3. Required Hearing

A public hearing shall be required for development review as shown in the table below.

[TABLE]

D. Modify or Remove a Condition

Any request to modify or remove a condition of approval for a development application will follow the same review procedures, including all required public hearing(s), as the original action.

Sec. 7.2.2. Zoning Map Amendment (Rezoning)

A. Applicability

1. The boundaries of the Zoning Map may from time to time be amended, supplemented, changed, or modified as provided by § 264 and § 265 of NYS Town Law.
2. A rezoning may be initiated by the Town Board, the Planning Board, the Planning Director, the property owner of the property to be rezoned, or an authorized agent of the owner.
3. A rezoning may also be initiated when the owners of 50 percent or more of the subject property, excluding public streets, in any district present a signed petition to the Town Board requesting a Zoning Map amendment.

B. Application Requirements and Development Plan for Rezoning

1. An application for rezoning shall be submitted in accordance with § 8-2-2, Application Requirements.
2. All applications shall be complete in accordance with § 8-2-2D before the Zoning Enforcement Officer is required to review the application. An application shall not be considered complete until a SEQR determination under Town Code, Chapter 104, Environmental Quality Review, can be made.
3. In addition to the information required above, the following information shall be submitted as part of the formal application for rezoning to the SC district.
 - a. A market analysis, including:
 - i. Identification of the trade area of the proposed shopping center;
 - ii. Trade area population, present and future; and
 - iii. Net potential customers' buying power for stores in the proposed shopping center.
 - b. A financial analysis indicating the ability of the petitioner to carry out the project.
 - c. A traffic study, including an estimate of traffic volumes to be generated by the development and the assignment of traffic to proposed entrances and exits.

C. Action by the Planning Director

1. Upon receipt of a petition for rezoning, the Town Clerk shall transmit the application to the Planning Director for distribution to officials and agencies as deemed appropriate for their review, report and recommendation. Such officials and agencies shall each, within 30 days from receiving the petition, furnish the Planning Director a report pertinent to their respective jurisdictions.
2. The Planning Director shall prepare a report that reviews the rezoning request in light of any reports, recommendations, applicable plans and the general requirements of this Zoning Ordinance. A copy shall be provided to the Planning Board.

D. Action by the Planning Board

1. The Planning Board shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings. The Planning Board shall review the petition and evaluate the report received from the Planning Director.
2. Within 62 days following close of the public hearing, the Planning Board shall furnish to the town Board and petitioner either its findings that the proposed rezoning is generally consistent with the Comprehensive Plan and the regulations, standards and purpose of this Ordinance or a finding of any failure of such compliance and a recommendation that the rezoning be approved, disapproved or modified.
3. The Planning Board may include in a favorable report a recommendation that the Town Board establish conditions as a part of any resolution approving the application in order to protect the public health, safety, welfare and environmental quality of the community and is generally consistent with the policies of the Comprehensive Plan and this Ordinance.
4. An unfavorable report shall state clearly the reasons therefore and, if appropriate, point out to the petitioner what changes might be necessary in order to receive a favorable report.

E. General Review Criteria

In recommending a favorable report, the Planning Board shall consider and make findings on the following matters:

1. The proposed zoning and development plan is generally consistent with the policies of the Comprehensive Plan and this Ordinance;
2. Whether or not there are adequate services and utilities available or proposed to be made available in the construction of the development;
3. Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood; and
4. Suitability of the subject property for uses permitted by the current versus the proposed district.
5. Whether the proposed change tends to improve the balance of uses, or meets a specific demand in the Town.

F. Action by the Town Board

1. Following completion of Planning Board review and upon written request by the petitioner, the Town Board shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings. A further public notice shall be published and paid for by the petitioner when a hearing postponement is requested by the petitioner.
2. If the petitioner does not request a public hearing before the Town Board as provided for by this Ordinance within six months after the Planning Board makes its report, the petition shall be deemed withdrawn.

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3. Upon request, the Town Board shall hold the public hearing and render a decision within 62 days thereafter. The time within which the Town Board shall render a decision may be extended by mutual consent of the petitioner and the Town Board.
4. If the Town Board approves the amendment, supplement, change or modification to district boundaries or classifications, the Zoning Map shall be amended after publication as required by § 265 of NYS Town Law.
5. Amending the Zoning Map does not constitute recording of a subdivision plat nor authorize the issuance of building permits. Such actions can only be taken after site plan approval in accordance with § 8-7 or subdivision approval in accordance with the Town of Amherst Subdivision Regulations.

G. Notice of Decision

The decision of the Town Board shall be filed in the Office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the petitioner.

H. Resubmittal of Withdrawn or Denied Applications

When a petition has been filed and processed within 10 days prior to the scheduled public hearing of the Town Board and is thereafter withdrawn, or is withdrawn or denied after the hearing, a petition seeking substantially the same relief shall not be considered or voted on by the Town Board, except for a vote to table or to receive and file, within one year from the date of such previous filing, unless the Planning Board shall first find that there have been substantial changes which would merit a hearing or rehearing, in which case the Planning Board shall in its recommendation set forth the grounds for its determination. This restriction shall not apply where the Town Board has not finally determined the proceeding within 62 days following the public hearing.

I. Review of Zoning Changes

The Town may review property not developed within three years following a zoning classification change to determine whether or not the classification remains appropriate. Following the review, the Town Board may call a public hearing to consider a further change in classification, as it deems appropriate.

Sec. 7.2.3. **Planned District Rezoning**

A. Applicability

1. This Section shall apply to applications requesting a zoning map amendment to the PRD, PDD, or TND planned districts and for the Planned Unit Development Process (PUD), as applicable.
2. A conceptual development plan shall be required to petition to rezone to a planned district or apply for a PUD in an applicable district. The development plan shall become part of the petition for rezoning or the application for a PUD and shall be reviewed concurrently.
3. The conceptual development plan procedure is established to assure that the proposed petition for rezoning or application for a PUD is consistent with this Ordinance and generally consistent with the policies of the Comprehensive Plan.
4. A request for rezoning to a planned district or a PUD application may be initiated by the Town Board, the property owner of the property to be rezoned or an authorized agent of the owner.

B. Application Requirements and Development Plan

1. An application for planned district rezoning or a PUD application shall be submitted in accordance with § 8-2-2, Application Requirements.
2. All applications shall be complete in accordance with § 8-2-2D before the Planning Director is required to review the application. An application shall not be considered complete until a SEQR determination under Town Code, Chapter 104, Environmental Quality Review, can be made.
3. A conceptual development plan shall be included with the application. The precise contents of the development plan shall be established by the Planning Director.

C. Action by the Planning Director

1. Upon receipt of a petition for planned district rezoning or an application for a PUD, the Town Clerk shall transmit the application and the associated conceptual development plan to the Planning Director for distribution to officials and agencies as deemed appropriate for their review, report and recommendation. Such officials and agencies shall each, within 30 days from receiving the petition, furnish the Planning Director a report pertinent to their respective jurisdictions.
2. The Planning Director shall prepare a report that reviews the planned district rezoning request or PUD application and the associated conceptual development plan in light of any reports, recommendations, applicable plans and the general requirements of this Zoning Ordinance. A copy shall be provided to the Planning Board.

D. Action by the Planning Board

1. The Planning Board shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings. The Planning Board shall review the rezoning petition or

PUD application and the associated development plan and evaluate the report received from the Planning Director.

2. Within 62 days following receipt of the petition by the Planning Director, the Planning Board shall furnish to the Town Board and petitioner either its findings that the proposed planned district rezoning or PUD application is generally consistent with the policies of the Comprehensive Plan and the regulations, standards and purpose of this Ordinance or a finding of any failure of such compliance and a recommendation that the rezoning be approved, disapproved or modified.
3. The Planning Board may include in a favorable report a recommendation that the Town Board establish conditions as a part of any resolution approving the application in order to protect the public health, safety, welfare and environmental quality of the community and is generally consistent with the policies of the Comprehensive Plan and this Ordinance.
4. An unfavorable report shall state clearly the reasons therefore and, if appropriate, point out to the petitioner what changes might be necessary in order to receive a favorable report.

E. Review Criteria for a Planned District

In recommending a favorable report to approve a rezoning to a Planned District or a PUD application, the Planning Board shall consider and make findings on the following matters in addition to those specified in § 8-3-5:

1. The proposed conceptual development plan meets the purpose and objectives of the PRD, PDD, TND or the district in which the PUD is located.
2. For a Planned District rezoning, the proposed conceptual development plan shall meet all the use regulations of Part 6. The dimensional requirements of the PRD, PDD, or TND districts must also be met.
3. A PUD development plan must be consistent with all the applicable use regulations in Part 6 and the purpose statement of the zoning district in which it is located.

F. Action by the Town Board

1. Following completion of Planning Board review and upon written request by the petitioner, the Town Board shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings. A further public notice shall be published and paid for by the petitioner when a hearing postponement is requested by the petitioner.
2. If the petitioner does not request a public hearing before the Town Board as provided for by this Ordinance within six months after the Planning Board makes its report, the petition shall be deemed withdrawn.
3. Upon request, the Town Board shall hold the public hearing and render a decision within 62 days thereafter. The time within which the Town Board shall render a decision may be extended by mutual consent of the petitioner and the Town Board.
4. If the Town Board approves a planned district rezoning the Zoning Map shall be amended after publication as required by § 265 of NYS Town Law.

5. Amending the Zoning Map or approval of a PUD application does not constitute recording of a subdivision plat nor authorize the issuance of building permits. Such actions can only be taken after site plan approval in accordance with § 8-7 or subdivision approval in accordance with the Town of Amherst Subdivision Regulations.
6. The determination by the Town Board of whether to approve rezoning to a planned district or a PUD application to adjust any regulations, standards or criteria of this Ordinance shall be based on its review of the proposed conceptual development plan, the report of the Planning Board and the Planning Director and any matters brought forth at the hearing and approval or rejection of a development plan where the Town Board has acted on its own initiative. Such approval shall include the making of the findings specified in § 8-3-5 and § 8-4-5.
7. The Town Board may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its resolution approving an application additional conditions or requirements consistent with this Ordinance and generally consistent with the policies of the Comprehensive Plan.
8. If such additional conditions or requirements are proposed, the petitioner shall be given notice by the Town Clerk in writing of such additional conditions or requirements within 15 days of the filing of the Town Board's decision. The Zoning Map shall not be amended or the PUD application shall not be deemed approved until the petitioner has filed with the Town Clerk written consent to the development plan as modified. If additional conditions or requirements are imposed by the Town Board, a restriction stating those requirements or conditions shall be noted on the deed. Failure of the petitioner to file consent with the Town Clerk within 62 days of the Town Board's action shall constitute a rejection of the conditions, and the application shall be null and void. Extensions of this period may be granted by the Town Board.

G. Notice of Decision

The decision of the Town Board shall be filed in the Office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the petitioner.

H. Subsequent Amendment of Development Plan

1. Amendments to conditions and restrictions shall be resubmitted and reviewed for development plan approval as if it were a new application. Any changes subject to the requirements as defined above shall be reviewed first by the Planning Board. The Town Board shall be responsible for final review and action.
2. Amendments to any other conditions and restrictions for the development plan shall be reviewed and approved in accordance with § 8-7-3

I. Resubmittal of Withdrawn or Denied Applications

When a petition has been filed and processed within 10 days prior to the scheduled public hearing of the Town Board and is thereafter withdrawn, or is withdrawn or denied after the hearing, a petition seeking substantially the same relief shall not be considered or voted on by the Town Board, except

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for a vote to table or to receive and file, within one year from the date of such previous filing, unless the Planning Board shall first find that there have been substantial changes which would merit a hearing or rehearing, in which case the Planning Board shall in its recommendation set forth the grounds for its determination. This restriction shall not apply where the Town Board has not finally determined the proceeding within 62 days following the public hearing.

J. **Development Plan Phasing**

If the development is to be implemented in phases, each phase shall have adequate provision for access, parking, open space, recreation areas and stormwater management and other public improvements to serve the development in the event that other phases are not constructed. All proposed phasing of infrastructure and utilities shall be shown in the development plan. Where the overall development will require more than 24 months to complete, such development shall be required to be phased. Each phase shall be provided with temporary or permanent transitional features, buffers or protective areas in order to prevent damage to completed phases, to future phases and to adjoining property.

K. **Action Following Development Plan Approval**

No construction or site improvement work may commence until subdivision approval has been granted, or site plan approval has been granted and all applicable permits or approvals are obtained in accordance with § 8-7, Site Plan Review.

Sec. 7.2.4. **Text Amendment**

A. **Applicability**

1. The Town Board shall consider amendments to the text of this Ordinance, as may be desired from time to time.
2. Such amendments shall be made in accordance with the provisions of this Section.
3. A request to amend the text of this Ordinance may be initiated by the Town Board, the Planning Board, the ZBA, the Planning Director, Zoning Enforcement Officer or the Commissioner of Building.

B. **Action by the Planning Director, Zoning Enforcement Officer or Commissioner of Building**

1. When a text amendment is initiated as described in § 8-5-1C, the Planning Director, Zoning Enforcement Officer or the Commissioner of Building, as applicable, in consultation with the Town Attorney's Office, shall draft an appropriate amendment and present that amendment to the Planning Board.
2. The Planning Director, Zoning Enforcement Officer or Commissioner of Building, as applicable, shall prepare a staff report that reviews the proposed text amendment request. A copy shall be provided to the Planning Board.

C. **Action by the Planning Board**

The Planning Board shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings. The Planning Board shall make a recommendation on the application to the Town Board. If the Planning Board fails to make a recommendation within 90 days, the Town Board may process the request without a recommendation.

D. **Action by the Town Board**

1. Before taking action on a text amendment, the Town Board shall consider the recommendations of the Planning Board, Planning Director, Zoning Enforcement Officer and the Commissioner of Building, and shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings.
2. Following the public hearing, the Town Board may approve the amendment, deny the amendment, or send the amendment back to the Planning Director, Zoning Enforcement Officer or Commissioner of Building, as applicable, for additional consideration.

E. **Review Criteria**

1. In evaluating any proposed amendment of the text of this Ordinance, the Town Board shall consider the following:
 - a. The extent to which the proposed text amendment is consistent with the remainder of this Ordinance, including, specifically, any purpose statements;

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- b. The extent to which the proposed text amendment represents a new idea not considered in the existing ordinance, or represents a revision necessitated by changing circumstances over time;
 - c. Whether or not the proposed text amendment corrects an error in the ordinance; and
 - d. Whether or not the proposed text amendment revises the ordinance to comply with state or federal statutes or case law.
2. In deciding whether to adopt a proposed amendment to this Ordinance, the governing principle before the Town Board is whether the proposed amendment advances the public health, safety or welfare and is consistent with this Ordinance and generally consistent with the policies of the Comprehensive Plan.

Sec. 7.2.5. **Special Use Permit**

A. **Applicability**

1. Special uses within the zoning districts are generally considered to be uses which are appropriate in a particular zoning district but because of their potential for incompatibility with adjacent uses require individual review and may require the imposition of conditions in order to assure the appropriateness of the use in a particular zoning district.
2. A special use permit shall be required in accordance with the district use tables in Part 3, Part 4 and Part 5.
3. The ZBA shall hear and decide all applications for special use permits in accordance with § 274-b of NYS Town Law.

B. **Application Requirements**

1. An application for a special use permit shall be submitted in accordance with § 8-2-2, Application Requirements.
2. All applications shall be complete in accordance with § 8-2-2D before the Zoning Enforcement Officer is required to review the application. An application shall not be considered complete until a SEQR determination under Town Code, Chapter 104, Environmental Quality Review, as amended, can be made.

C. **Action by the Zoning Enforcement Officer**

When applicable, the Zoning Enforcement Officer shall prepare a report that reviews the request for a special use permit.

D. **Action by the Zoning Enforcement Officer**

The Zoning Enforcement Officer shall prepare a report that reviews the request for a special use permit.

E. **Action by the ZBA**

1. Within 62 days following receipt of the application, the ZBA shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings.
2. After review of the special use permit application and the public hearing, the ZBA shall make written findings of approval, approval with modifications or conditions, or denial.
3. After conducting the public hearing, the ZBA shall render a decision within 62 days thereafter. The time within which the decision shall be rendered may be extended by mutual consent of the petitioner and the Board.
4. The ZBA may approve, approve with modifications, or disapprove the application for a special use permit.
5. The ZBA shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit. Upon approval of a

special use permit, any such conditions shall be met in connection with issuance of permits by applicable agents and officers of the Town.

F. Review Criteria

1. In rendering a decision, the ZBA shall consider and make findings that the proposed use:
 - a. Will be generally consistent with the policies of the Comprehensive Plan;
 - b. Meets any specific criteria set forth in this Ordinance;
 - c. Will be compatible with existing uses adjacent to and near the property;
 - d. Will be in harmony with the general purpose of this Ordinance;
 - e. Will not tend to depreciate the value of adjacent property;
 - f. Will not create a hazard to health, safety or the general welfare;
 - g. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
 - h. Will not otherwise be detrimental to the public convenience and welfare.
2. Commercial recreation activities not conducted within completely enclosed buildings may be permitted by the Zoning Board of Appeals in accordance with this Section. In evaluating the application for the special permit, In addition to the review criteria in § 8-6-6A, the ZBA may also consider the proximity of the any commercial outdoor recreation activities to residential and nonresidential properties, noise, odors, lighting and hours of operation. In approving a permit, the ZBA may impose conditions to eliminate or mitigate off-site impacts of the commercial outdoor recreation activity.

G. Conditions on Special Use Permits

1. The ZBA may impose such conditions upon the premises benefited by a special use permit as may be necessary to prevent or minimize adverse effects upon other property in the neighborhood, including limitations on the time period for which the permit is granted.
2. Such conditions shall be expressly set forth in the resolution authorizing the special use permit.

H. Notice of Decision

The decision of the ZBA shall be filed in the Office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the petitioner.

I. Renewal of Special Use Permits with Specific Time Periods

Special use permits that have been issued for specific time periods are subject to review for compliance with all of the conditions imposed at the time of approval of the initial permit. Following a public hearing on the matter, the ZBA may deny a renewal of a special use permit when any of the following apply:

1. The petitioner has failed to comply with one or more of the conditions of the prior approval;

2. Substantial new issues regarding the permit conditions during the operation of the use have arisen;
3. The general requirements of this Zoning Ordinance have not been met;
4. There are changes in the area or neighborhood which would be incompatible with the special use.

J. **Period of Validity**

1. A special use permit shall become null and void six months after the date on which it was issued unless the special use is established within six months of the date of ZBA approval.
2. A special use permit shall become null and void upon a finding by the Zoning Enforcement Officer that any of the conditions in the permit have been violated.
3. A special use permit shall be deemed to authorize only the particular use or its operation for which it was issued, and such permit shall automatically expire and cease to be of any force or effect if such use shall, for any reason, be discontinued for a period of six consecutive months.

Sec. 7.2.6. **Site Plan Review**

A. Applicability

1. In accordance with § 274-a of NYS Town Law no construction or site improvement work may commence until site plan approval, where required, has been granted.
2. Site plan review shall not be required for development of two or fewer single- or two-family lots except in the NCD district.
3. The addition of residential units to a mixed use development shall be regulated by the provisions for residential units.

B. Initial Site Plans for New Development

An initial site plan for new development shall be submitted in accordance with the following table:

TYPE OF DEVELOPMENT	MAJOR SITE PLAN	MINOR SITE PLAN
RESIDENTIAL		
Up to 4 Residential Units		
Proposed construction of 3 or 4 residential units (If proposed single family lots result in the subdivision of a parcel into 5 or more lots within a 3-year period, see Town of Amherst Subdivision Regulations) Site plan review shall not be required for development of one or two single-family lots, except in the NCD district		X
5 or More Residential Units		
Proposed construction of 5 or more residential units (If 5 or more residential lots are proposed, see Town of Amherst Subdivision Regulations)	X	
SEQRA Type 1 Action		
Any proposed residential development classified as a Type 1 action under Town Code, Chapter 104, Environmental Quality Review, as amended.	X	
NONRESIDENTIAL		
Within 250 Feet of Residential		
Proposed nonresidential or mixed-use development located within 250 feet of residential use or zoning	X	
Under 4,000 SF		
Nonresidential or mixed-use development of less than 4,000 square feet of gross floor area and beyond 250 feet from a residential lot boundary		X
Nonresidential or mixed-use development of less than 4,000 square feet of gross floor area and within 250 feet of a residential lot boundary	X	
Over 4,000 SF		
Nonresidential or mixed-use development of greater than 4,000 square feet of gross floor area of all buildings	X	
Under 25,000 SF in Mixed Use District		
<u>Nonresidential or mixed-use development of less than 25,000 square feet of gross floor area and beyond 250 feet from a residential lot boundary</u>		X
<u>Nonresidential or mixed-use development of less than 25,000 square feet of gross floor area and within 250 feet from a residential lot boundary</u>	X	

Over 25,000 SF in Mixed Use District

Nonresidential or mixed-use development of more than 25,000 square feet of gross floor area X

~~Under 10,000 SF in the TNB Overlay District~~

~~Nonresidential or mixed-use development of less than 10,000 square feet of gross floor area in the TNB overlay district X~~

SEQRA Type 1 Action

Any proposed nonresidential or mixed use development classified as a Type I action under Town Code, Chapter 104, Environmental Quality Review, as amended. X

C. Modification to a Previously Approved Site Plan or Sites Developed Prior to 1968

1. Previously approved sites shall be modified in accordance with the following table:

TYPE OF DEVELOPMENT	MAJOR SITE PLAN	MINOR SITE PLAN	MINOR ADJUSTMENT
RESIDENTIAL			
Adding 4 or Fewer Residential Units			
Addition of 4 or fewer residential units not on an individual lot		X	
Adding 5 or More Residential Units			
Addition of 5 or more residential units not on an individual lot	X		
Multifamily Landscape Plan			
Modifications to approved landscape plan for a multi-family residential development			X
Adding Accessory Structures			
Proposed accessory structures, such as A/C compressors, generators, tool or garden sheds, decks and gazebos			X
Modifications to Parking			
NONRESIDENTIAL			
Adding Less Than 750 Square Feet			
Proposed addition of less than 750 square feet of gross floor area		X	
Adding Between 750 and 4,000 Square Feet			
1. Proposed addition of between 750 and 4,000 square feet of gross floor area and within 250 feet of a residential lot boundary, as measured[1] from the work limit line as shown on the site plan. In the event that no work limit line is shown, the property boundary shall be used as the work limit line.	X		
2. Proposed addition of between 750 and 4,000 square feet of gross floor area and greater than 250 feet of a residential lot boundary, as measured from the work limit line.		X	

TYPE OF DEVELOPMENT	MAJOR SITE PLAN	MINOR SITE PLAN	MINOR ADJUSTMENT
Adding More Than 4,000 Square Feet Proposed addition of more than 4,000 square feet	X		
Adding Less Than 10,000 Square Feet in the TNB Overlay District Proposed addition of 10,000 square feet or less of gross floor area in the TNB overlay district		X	
Changes to Parking, Loading or Stacking Any proposed changes to parking, loading or stacking located more than 250 feet from residential use or district. Changes to parking, loading or stacking located within 250 feet of residential use or district may require a major site plan at the discretion of the Zoning Enforcement Officer		X	
Adding Accessory Structures Accessory structures, such as generators, RPZ's, tool sheds, HVAC equipment, hot boxes, transformers, or compressors		X	
Minor Adjustment Proposed modification to an approved landscape plan to preserve existing mature trees and/or vegetation or change proposed plant species or the relocation of underground utilities where such modifications are determined by the Zoning Enforcement Officer to be consistent with the intent and objectives of the original site plan			X
Other A proposed modification to a previously approved site plan where such modification is not included in any of the other categories in this section.			X

- No site plan review shall be required for improvements on an existing single- or two-family lot created as part of a site plan, except in the NCD district.
- Notwithstanding the requirements in the table in § 8-7-3, a major site plan may be required if the Zoning Enforcement Officer determines that the proposed modifications are not consistent with the intent and objectives of the original site plan approval or generally consistent with the policies of the Comprehensive Plan.

D. Application Requirements

- An application for site plan review shall be submitted in accordance with § 8-2-2, Application Requirements.
- All applications shall be complete in accordance with § 8-2-2D before the Zoning Enforcement Officer is required to review the application. An application shall not

be considered complete until a SEQR determination under Town Code, Chapter 104, Environmental Quality Review, as amended, can be made.

3. The site plan shall be prepared by a NYS licensed engineer, architect, landscape architect, or surveyor, as appropriate.
4. The content of the site plan application shall be approved by the Zoning Enforcement Officer prior to filing.

E. Minor Site Plan Approval

1. A minor site plan requires only Zoning Enforcement Officer approval.
2. Within 30 days of receipt of a complete application, the Zoning Enforcement Officer shall, after receiving recommendations from the Town's review agencies and any appropriate reviewing agencies, approve, approve with modifications, or deny the site plan. Where a site plan does not meet the requirements of this Ordinance, the Zoning Enforcement Officer shall refer said site plan to the Planning Board for their review.
3. The Zoning Enforcement Officer may grant minor site plan approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with applicable regulations or where additional conditions have been agreed to by the petitioner. If the proposed minor site plan is determined to be consistent with all applicable regulations, the Zoning Enforcement Officer shall approve the minor site plan.
4. The Zoning Enforcement Officer shall have sole authority in determining the compliance of a minor site plan with the provisions of this Ordinance and generally consistent with the policies of the Comprehensive Plan.
5. The Zoning Enforcement Officer may refer a minor site plan to the Planning Board for review as a major site plan where the Zoning Enforcement Officer determines that there is high potential for detrimental impacts on immediately abutting residential neighbors.
6. The date the Zoning Enforcement Officer signs the approved minor site plan shall establish the date of approval for a minor site plan.

F. Major Site Plan Approval

A major site plan shall require Planning Board approval.

1. Action by the Zoning Enforcement Officer

Within 30 days of receipt of a complete application, and after receiving recommendations from the appropriate reviewing agencies, the Zoning Enforcement Officer shall notify the Planning Board in writing of any comments or recommendations on the action.

2. Action by the Planning Board

- a. The Planning Board shall schedule a public hearing within 62 days of receipt of a complete application and give notice in accordance with § 8-2-3, Notice and Public Hearings. Within

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62 days of the close of the public hearing, the Planning Board shall act on it and notify the appropriate agencies, petitioner and Town Clerk of its action.

- b. The time within which the decision shall be rendered may be extended by mutual consent of the petitioner and the Board.
- c. In determining its action, the Planning Board may seek advice from the agencies it deems appropriate.
- d. In determining its action, the Planning Board shall also seek advice and assistance from the Town Attorney with respect to all covenants, restrictions and easements to be recorded and covenants for maintenance; the Town Engineer and Highway Superintendent with respect to improvements plans; the Commissioner of Building with respect to building plans and any other persons or committees.
- e. The Planning Board decision date shall establish the date of approval for a major site plan.

G. Site Plan Review Criteria

During review of a minor or major site plan the Zoning Enforcement Officer or Planning Board, as applicable, shall ensure that the site plan is consistent with this Ordinance and generally consistent with the policies of the Comprehensive Plan.

H. Additional Review Criteria for Residential Site Plans

When reviewing a minor or major residential site plan, the Zoning Enforcement Officer or Planning Board, as applicable, shall consider the following factors in addition to those described in § 8-7-7:

1. The adequacy of usable space for active and passive recreation including pedestrian connections;
2. Adequacy of open space lands for public ownership and use offered for dedication or other disposition to the town or other public entity; and
3. Adequacy of school sites and facilities.
4. The extension of roadways provided to adjacent property.

I. Design Exception

1. A design exception allows a project to use an alternative design approach to satisfy a particular design standard in the Mixed Use Districts.
2. The alternative design approach must satisfy the overall intent of the particular design standard.
3. A design exception is not a variance, which provides relief from a requirement considered to be an unnecessary hardship.
4. The design exception is required to meet the intent of the applicable standard in an alternative way and must be considered by the Planning Board to be equivalent or better than the outcome generated by the ordinance standard.

5. Design exceptions are reviewed by the Planning Board concurrent with the site plan and their approval must be incorporated into the adopted conditions applied to the site plan.
6. Following approval of a project, no further design exceptions are allowed, and changes must be made through either modification of the site plan or through the variance process.

J. Findings for Site Plan Approval

In rendering a final decision, the Zoning Enforcement Officer or Planning Board, as applicable, shall consider and make findings that:

1. The proposed site plan is consistent with the development plan if one is required.
2. The proposed site plan is consistent with the purpose and specific requirements of this Ordinance and generally consistent with the policies of the Comprehensive Plan;
3. Adequate services and utilities will be available prior to occupancy; and
4. The site plan is consistent with all other applicable laws.

K. Approval with Conditions

The Planning Board may grant approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with applicable regulations and the policies of the Comprehensive Plan or where additional conditions have been agreed to by the petitioner.

L. Notice of Decision

In accordance with NYS Town Law § 274(a), the decision of the Planning Board or Zoning Enforcement Officer, as applicable, shall be filed in the Office of the Town Clerk consistent with all applicable state requirements.

M. Changes in Site Plan

1. At any time within 30 days following the initial site plan submission to the Zoning Enforcement Officer, the petitioner may submit to the Zoning Enforcement Officer site plan modifications which do not materially affect the fundamental character of a proposed site plan, and the time periods stated in this Section shall continue to apply.
2. If, subsequent to the approval of a site plan by the appropriate authority, the petitioner proposes any modification (other than to correct minor or technical omissions or inaccuracies) of the site plan, the procedures set forth in § 8-2-2, Application Requirements, shall be applicable to such modification, except that the materials submitted to the Zoning Enforcement Officer shall relate only to such modification.
3. Minor modifications to the site plan may be approved by the Zoning Enforcement Officer. Minor modifications include:
 - a. Error correction that does not alter the site plan.
 - b. Modifications that are not in violation of this Ordinance
 - c. Changes that do not affect overall site layout or properties outside of the site.

- d. Changes that are of a lesser intensity than those listed in the table in § 8-7-3A.
- e. Location of dumpster containers and other refuse containers, including enclosures.

N. Subdivision Review

Site plan review under the provisions of this ordinance may occur simultaneously with subdivision plat review, where required. A single public hearing for approval of the site plan and its associated plat shall be permitted, as determined by the Zoning Enforcement Officer.

O. Development Phasing

1. If the development is to be implemented in phases, each phase shall have adequate provision for access, parking, open space, recreation areas and stormwater management and other public improvements to serve the development in accordance with the applicable criteria in the event that other phases are not constructed.
2. Each phase shall be provided with temporary or permanent transitional features, buffers or protective areas in order to prevent damage to completed phases, to future phases and to adjoining property.
3. For developments which are developed in phases, construction of all phases of the development as shown on the approved site plan for that development shall be commenced within five years from the date of that site plan approval. If construction of all phases of a development is not commenced within five years from the date of site plan approval, the phased development is thereafter required to obtain site plan approval in accordance with the current requirements of this Ordinance in effect at the time of the next phase of development for all undeveloped phases of the original site plan. Construction of all phases of a development shall be deemed to have commenced when building permits have been obtained and construction has started for all buildings shown on the approved site plan.

P. Period of Validity

Except for subdivision plans that have been duly filed in the Office of the County Clerk, if construction of the approved development has not commenced within two years from the time of site plan approval, that approval shall be deemed revoked. Extensions not to exceed two years may be granted by the Planning Board or Zoning Enforcement Officer. Approval of extensions for site plans shall be made by the applicable approval body for Major or Minor Site Plan or Minor Site Adjustment. Multiple extensions may be granted.

Sec. 7.2.7. **Temporary Use Permit**

A. **Applicability**

The ZBA may authorize a temporary and revocable use permit for not more than two years for uses or structures that do not conform with the regulations of this ordinance for the district in which it is located.

B. **Application Requirements**

1. An application for a temporary use permit shall be submitted in accordance with § 8-2-2, Application Requirements.
2. As part of the application, written permission shall be required of the property owner expressly authorizing the petitioner to submit an application for a temporary use permit.

C. **Action by the Zoning Enforcement Officer**

The Zoning Enforcement Officer shall issue a recommendation on the request for a temporary use permit. A copy shall be provided to the ZBA and the petitioner.

D. **Action by the Zoning Enforcement Officer**

The Zoning Enforcement Officer shall prepare a report that reviews the request for a temporary use permit. A copy shall be provided to the ZBA and the petitioner.

E. **Action by the ZBA**

1. The ZBA shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings. The ZBA shall decide upon the temporary use permit by applying the required findings below.
2. The ZBA may authorize a temporary and revocable use permit for not more than two years for uses or structures that do not conform with the regulations of this ordinance for the district in which it is located.

F. **Required Findings**

The ZBA may approve the issuance of a temporary use permit provided the following findings are made:

1. Such use is of a temporary nature and does not involve the erection or enlargement of any permanent structure.
2. In case of a renewal of such a permit, that all conditions and safeguards previously required have been met.
3. The proposed use:
 - a. Will be generally consistent with the policies of the Comprehensive Plan;
 - b. Meets any specific criteria set forth in this Ordinance;
 - c. Will be compatible with existing uses adjacent to and near the property;

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- d. Will be in harmony with the general purpose of this Ordinance;
- e. Will not tend to depreciate the value of adjacent property;
- f. Will not create a hazard to health, safety or the general welfare;
- g. Will not alter the essential character of the neighborhood nor be detrimental to the neighborhood residents; and
- h. Will not otherwise be detrimental to the public convenience and welfare.

G. Incidental Development

The ZBA may authorize temporary structures or uses incidental to development, provided that the nature and scale of the development is such as to require temporary structures or uses. The permit shall be on the condition that such development proceeds diligently.

H. Revocation of a Temporary Use Permit

A temporary use permit shall become null and void upon a finding by the Zoning Enforcement Officer that any of the conditions on the permit have been violated.

I. Violation

A violation of any condition or time limit established by the ZBA under this Section shall be a violation of this Ordinance.

Sec. 7.2.8. **Certificate of Occupancy or Compliance**

A. **Applicability**

A certificate of occupancy or compliance shall be required as a condition precedent to the occupancy and use of a structure and land as follows.

B. **Occupancy of a Structure Erected or Altered**

A certificate of occupancy or compliance shall be required before occupancy of a new structure or before occupancy or use of an existing structure which has been altered, moved, changed in use or increased in off-street parking, loading or stacking requirements. The certificate shall only be issued after the erection or alteration of said structure, or a component of the structure, or after required accessory use and all approved site plan requirements have been completed and found by inspection to be in conformity with the provisions of the applicable laws and the approved site plan.

C. **Change in Use of Conforming Structure or Land**

A certificate of occupancy or compliance shall be required before occupancy or use of a conforming structure or land where the specific occupancy has been changed and where, by reason of the provisions of this Ordinance or other applicable law, increased public or private facilities or modification of the structure are required. The certificate shall be issued when found by The Commissioner of Building to be in conformity with the provisions of all applicable laws.

D. **Change in Use of Nonconforming Building or Land**

A certificate of occupancy or compliance shall be required whenever the specific occupancy or use of a nonconforming building or land is changed.

E. **Application Requirements**

1. A certificate of occupancy or compliance shall be applied for by the owner or their agent and shall be issued by the Commissioner of Building.
2. An application for a certificate of occupancy or compliance shall be submitted in accordance with § 8-2-2, Application Requirements.
3. Applications for a certificate of occupancy or compliance shall contain accurate information furnished by the owner or the owner's agent as to size and location of the lot, structures occupying the lot, the dimensions of all yards and open spaces, the use of land or structures and all additional documents as may be required by the Commissioner of Building.
4. A record of all applications and certificates issued shall be kept in the Office of the Commissioner of Building and shall be made available to the public during regular office hours.

F. **Record of Existing Building and Land Use**

Upon application by the owner or agent, the Commissioner of Building shall inspect a building or tract of land existing on May 23, 2006 and shall issue a certificate of occupancy or compliance therefore, certifying:

1. The present use of the building or land;
2. If such use conforms to all the provisions of this Ordinance; or
3. If it is a lawfully existing nonconforming use.

Sec. 7.2.9. **Building Permit For Signs**

A. **Applicability**

1. Certain signs are allowed without a building permit for a sign (as set forth in § 7-8). Signs requiring permits are allowed in accordance with the following requirements.
2. Signs not visible from the public right-of-way shall not require a building permit for a sign; however, electrical or other permits may be required.
3. A coordinated sign plan may be required prior to the issuance of a building permit for a sign in accordance with § 8-11, Coordinated Sign Plan.

B. **Permit Required for Signs**

Except as otherwise provided in § 7-8, no sign may be erected, moved, enlarged, or altered except in accordance with and pursuant to a building permit for a sign. No building permit for a sign shall be issued unless the plans and information submitted demonstrate that the sign will comply to all applicable requirements of this Ordinance.

C. **Application Requirements**

An application for a building permit for a sign shall be submitted in accordance with § 8-2-2, Application Requirements.

D. **Action by the Commissioner of Building**

1. The Commissioner of Building shall review each application for a building permit for a sign application for conformity with this Ordinance and act to approve, approve with conditions, or deny the permit.
2. The Commissioner of Building may grant approval with conditions only to the extent that such conditions specify actions necessary to bring the application into complete compliance with this Ordinance.
3. A sign may also require separate building or electrical permits from the Town.

E. **Period of Validity**

Any permit issued for the erection of a sign shall become null and void if sign installation is not completed within six months after the date of approval.

F. **Building Permits For Temporary Signs**

Permits for temporary signs shall be permitted in accordance with § 7-8-10, Temporary Signs. The approval time period shall be specified on the permit.

G. **Revocation of Maintenance of Signs**

1. If at any time the Commissioner of Building finds that a sign is not in good repair or does not comply with the building permit for a sign issued or with the provisions of § 7-8-11, Construction and Maintenance of Signs the Commissioner of Building shall order the owner or lessee of the premises upon which it is located, the owner and the user of the sign and

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the holder of the building permit for a sign to repair it or bring it into compliance with the use permit, as the case may be, or remove the sign at the direction of the Commissioner of Building.

2. Such order shall be written and served personally or by mail and directed to the last known address of the owner, lessee, user or holder. Failure to comply with such an order shall constitute a violation of this Ordinance.

H. **Illegal Signs**

Illegal or non-compliant signs shall be removed at the direction of the Commissioner of Building.

Sec. 7.2.10. **Coordinated Sign Plan**

A. **Applicability**

A coordinated sign plan shall be required for all signs requiring a building permit in a multiple development prior to issuance of said permit. For multiple developments in the PRD and PDD districts, the coordinated sign plan is required unless the sign regulations are superseded by the development agreement.

B. **Application Requirements**

1. An application for a coordinated sign plan shall be submitted in accordance with § 8-2-2, Application Requirements.
2. All applications shall be complete in accordance with § 8-2-2D before the Commissioner of Building is required to review the application.
3. The content of the coordinated sign plan application shall be approved by the Commissioner of Building prior to filing.

C. **Coordinated Sign Plan Review and Approval**

A Coordinated Sign Plan only requires Commissioner of Building approval. At his discretion, the Zoning Enforcement Officer may refer said coordinated sign plan to the Planning Board for their review and decision.

1. When reviewing a coordinated sign plan, the Commissioner of Building shall consider the review criteria listed in § 7-8-12.
2. Within 30 days of receipt of a complete application, the Commissioner of Building shall, after receiving recommendations from the Town's review agencies along with any appropriate outside agency, approve, approve with modifications, or deny the coordinated sign plan.
3. The Commissioner of Building may grant coordinated sign plan approval with conditions only to the extent that such conditions specify the actions necessary to bring the application into complete compliance with applicable regulations or where additional conditions have been agreed to by the petitioner. If the proposed coordinated sign plan is determined to be consistent with all applicable regulations, the Commissioner of Building shall approve the coordinated sign plan.
4. The Commissioner of Building shall have sole authority in determining the compliance of a coordinated sign plan with the provisions of this Ordinance and its general consistency with the policies of the Comprehensive Plan.
5. The date the Commissioner of Building signs the approved coordinated sign plan shall establish the date of approval for a coordinated sign plan.
6. Should questions arise regarding a sign's conformance with an approved coordinated sign plan, the Building Department shall refer said sign to the Commissioner of Building for determination prior to the issuance of a building permit.

Sec. 7.2.11. **Written Interpretation**

A. **Applicability**

The Zoning Enforcement Officer shall interpret this Ordinance. Any interpretation of an order, requirement, decision or determination in connection with this Ordinance shall be final except as otherwise provided by law.

B. **Application Requirements**

A written request for interpretation of this Ordinance shall be submitted in accordance with § 8-2-2, Application Requirements.

C. **Action by the Zoning Enforcement Officer**

1. The Zoning Enforcement Officer, shall:
 - a. Review and evaluate the request as it pertains to the text of this Ordinance, the policies of the Comprehensive Plan and any other relevant information;
 - b. Consult with other staff, as necessary; and
 - c. Render an opinion.
2. The interpretation shall be provided to the petitioner in writing.

D. **Determination of Similar Uses**

1. The Zoning Enforcement Officer may determine that a use not specifically listed in any of the permitted building and use classifications in and districts established by this Ordinance is a similar use to those enumerated in a specific district or districts. In making a determination that a use is similar, the Commissioner shall first determine that:
 - a. The use is not listed in any other classification of permitted uses;
 - b. The use is appropriate and conforms to the basic characteristics of the classification to which it is to be added;
 - c. The use does not create dangers to health and safety and does not create offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences to an extent greater than that resulting from other uses listed in the classification to which it is to be added; and
 - d. Such a use does not create traffic to a greater extent than the other uses listed in the classification to which it is to be added.
2. Where a use not listed in the use table is found by the Zoning Enforcement Officer not to be similar to any other use in the table, the use shall be permitted only following a text amendment of these zoning regulations in accordance with § 8-5.
3. When considering appropriate districts for a use not listed in the Use Table, the district purpose statements in Part 3, Part 4 and Part 5 and the policies of the Comprehensive Plan shall be taken into consideration.

E. Official Record

The Zoning Enforcement Officer shall maintain an official record of the interpretation. The record of interpretations shall be available for public inspection during normal business hours.

Sec. 7.2.12. **Variance**

A. **Applicability**

The ZBA, on appeal from the decision or determination of any administrative official charged with enforcement of this Ordinance, shall have the power to grant use and area variances, subject to the standards and procedures in § 267-b of the NYS Town Law.

B. **Application Requirements**

An application for a variance shall be submitted in accordance with § 8-2-2, Application Requirements.

C. **Notice and Public Hearings**

Once the application has been determined complete by the Zoning Enforcement Officer, a public hearing shall be scheduled and notice shall be given in accordance with § 8-2-3, Notice and Public Hearings.

D. **Burden of Proof**

The petitioner seeking the variance shall have the burden of presenting sufficient evidence to allow the ZBA to reach a conclusion as set forth below as well as the burden of persuasion on those items.

E. **Action by the Zoning Board of Appeals (ZBA)**

1. After review of the variance application and the public hearing, the ZBA shall, in accordance with NYS Town Law § 267, make written findings of approval, approval with modifications or conditions, or denial.
2. The ZBA shall decide upon the variance within 62 days after receiving a complete application. The time within which the ZBA may render its decision may be extended by mutual consent of the petitioner and the ZBA.
3. In granting a variance, the ZBA may vary or modify the provisions of this Ordinance or such regulations so that the spirit of the law shall be observed, public safety secured and substantial justice done. Toward this end, the ZBA may prescribe such conditions or restrictions as it may deem necessary. Such conditions or restrictions shall be incorporated in the building permit and a violation of such permit shall be a violation of this Ordinance.

F. **Notice of Decision**

The decision of the ZBA shall be filed in the Office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the petitioner.

G. **Period of Validity**

Variances are valid for a period of two years from the date of approval. If the variance is not exercised within this time period, the variance shall expire. Notice of expiration shall be conveyed to the petitioner as part of the notification of approval.

Sec. 7.2.13. **Administrative Appeal**

A. **Applicability**

The ZBA shall hear and decide appeals where it is alleged that there is an error or misinterpretation in any order, requirement, decision or determination made by the Zoning Enforcement Officer or Zoning Enforcement Officer in regard to the enforcement of the provisions of this Ordinance or other regulations adopted pursuant to Article 16 of NYS Town Law. Rehearings shall be held only in accordance with § 267 of NYS Town Law.

B. **Application Requirements**

An application for an appeal shall be submitted in accordance with 8-2-2, Application Requirements.

C. **Deadline for Submission**

An application for an appeal shall be taken within 60 days after the filing of any order, requirement, decision, interpretation, or determination by the administrative official authorized to do so under the provisions of this Ordinance. Such application shall specify the grounds for the appeal.

D. **Record of Administrative Decision**

Upon receipt of a complete application from the Zoning Enforcement Officer, the Town Clerk shall forthwith transmit to the ZBA all papers constituting the record upon which the action appealed was taken from.

E. **Action by the Zoning Board of Appeals (ZBA)**

1. Once the application has been determined complete, a public hearing shall be scheduled and public notice shall be given in accordance with § 8-2-3, Notice and Public Hearings.
2. The ZBA shall decide upon the appeal within 62 days after the closing of the public hearing. The time within which the ZBA may render its decision may be extended by mutual consent of the petitioner and the Board.
3. The ZBA may reverse, modify or affirm, in whole or in part, any such appealed order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as in its opinion ought to be made in strictly applying and interpreting the provisions of this Ordinance and for such purposes shall have all the powers of the officer from whom the appeal is taken.
4. Appeals for interpretation shall be decided by the concurring vote of a majority of the members of the ZBA in compliance with § 267-a of NYS Town Law.

F. **Notice of Decision**

The decision the ZBA shall be filed in the Office of the Town Clerk within five business days after the decision is rendered, and a copy mailed to the petitioner.

G. Effect of Appeal

1. An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken determines a stay in proceedings would cause imminent peril to life or property, in which case proceedings shall only be stayed by the issuance of a restraining order, which may be granted by the ZBA or by the court of record on the application.
2. An appeal does not stop action lawfully approved (including construction activities authorized by a building permit), only actions presumed in violation of this Ordinance are stayed.

Sec. 7.2.14. **New Community District (NCD)**

A. Application and Procedures

1. General

Proceedings to create a NCD may be initiated by the Town Board with the approval of the principal owner or owners of the proposed new community site or by application of the principal owner or owners of the proposed community site. In the event that the new community site includes any lands which are not owned or controlled by a petitioner, said petitioner may request or the Town Board may require that such lands be included in the NCD by action of the Town Board taken on its own initiative simultaneously with the rezoning of the lands owned or controlled by said petitioner. In the case of proceedings begun by the Town Board on its own initiative regarding lands referred to in the preceding sentence and/or lands owned or controlled by said principal owner or owners, the public review procedure for the creation of a NCD shall be as the Town Board may require in accordance with applicable law. Accordingly, except as specified in subsection 8-15-2 of this Section, the provisions of subsection 8-15-2 of this Section are applicable only to proceedings initiated upon application of the principal owner or owners of the proposed new community site. As used in this Section, the "owner" shall be deemed to include a contract vendee or holder of an option to purchase or a person who or which has accepted any other form of firm commitment of lands to be developed for new community uses pursuant to a development plan as defined in subsection 8-15-1B of this Section.

2. Application for Development Plan Approval

a. Concept Plan

In order to allow the Town Board and the petitioner to reach an understanding on basic design requirements prior to investment in detailed planning and design, the petitioner shall submit a concept plan to the Director of Planning showing the proposed location and components of the new community development and shall consult with the Zoning Enforcement Officer and Planning Board concerning the procedure and criteria for approval. The purpose of the informal submission contemplated in this subsection is informational, and no formal Planning Board or Town Board action is required concerning such concept plan.

b. Development Plan

Formal application for a NCD shall be initiated by filing with the Town Clerk 10 copies of a development plan at an appropriate scale, not to the precision of a finished engineering drawing. It may consist of material prepared for other purposes, portions of which satisfy the formal requirements of development plans as set forth in this Section. Overlays, maps and drawings included in the submission shall be at a scale of not less than one inch to 500 feet unless otherwise specified in this subsection. The plan shall contain the following information:

- i. The proposed new community name, date, North point and scale of the plan and a clear identification of the submittal as a development plan;

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- ii. The name and address of the owner or owners of the land to be included within the NCD, the name and address of the developer(s) if other than the owner(s) and a description of the manner in which lands not owned, controlled or accepted by the principal owner, but intended for development under the development plan, are to be acquired, controlled or otherwise accepted for inclusion in such development;
- iii. An area map upon which shall be indicated the proposed NCD boundaries and major existing property ownerships and major easements within the district boundaries and at least 1,000 feet around the perimeter of the district. All property owned by the petitioner in the area shown on the map shall be identified and the amount of acreage indicated;
- iv. Aerial photographs showing the site and at least 1,000 feet around the perimeter at a scale of at least 200 feet to one inch, flown within three years of filing of the development plan and indicating any significant use changes occurring since the flight. Two such aerial photographs shall be submitted;
- v. Topographic map at a scale of at least 200 feet to one inch showing five-foot contour levels and key-spot elevations for all land in the proposed new community site, indicating areas currently subject to flooding at one-hundred-year frequency, all major drainage ditches and all existing floodways in the town storm drainage system. Closer contours shall be provided if requested by the Town Engineer;
- vi. A description of existing surface and subsurface soils and soil conditions and an overlay map and evaluation of the soils for the proposed use;
- vii. An overlay or map and description of the existing woodland, grassland, wetland, marshland and unique natural areas and description and evaluation of their quality;
- viii. A written plan or written program indicating provisions for management and protection of soil, water, woodland, wetland, marshland, grassland and wildlife resources;
- ix. The proposed approximate location of the various uses and their estimated areas;
- x. The general location, right-of-way width and approximate grade of all existing and proposed major highways, arterials and all major existing public and private rights-of-way and easements;
- xi. Approximate magnitude and general composition of the residential development in terms of the total number of dwelling units, with an analysis of such total number indicating the proposed range of housing costs and a numerical breakdown by dwelling unit type (for example, single-family, two-family, townhouse, patio house, garden apartments or student or elderly housing) and number of units, if any, proposed for real estate tax abatement. The petitioner shall also furnish a calculation of the residential density in dwelling units per gross acre. Such calculation shall conform to the requirements of 5-2-6A;
- xii. The approximate location, dimensions and proposed general uses of the major open space system, including private, common and public land;
- xiii. The overall proposed major storm drainage system, including the direction of flow and location of major existing and proposed storm sewers and drainageways, description

of stormwater storage and movement features and treatment of floodways and drainageways, if existent;

- xiv. Major existing and proposed linkages to the community at large with respect to pedestrian and vehicle transportation, water supply, sewage disposal, stormwater drainage, open space and recreation;
- xv. The proposed sanitary sewage disposal system serving the new community, including its projected load and the effect it will have on the existing and proposed town disposal system;
- xvi. Estimated future population of school-age children by age level, with anticipated breakdown between private and public school pupils and the method by which such lands are proposed to be made available to such school districts; and
- xvii. General description of the proposed provision of other community facilities, such as fire protection services and cultural facilities, if any, and indication of how these needs are proposed to be accommodated.

c. Documentation

The following documentation shall accompany the development plan:

- i. Evidence of how the petitioner's particular mix of land uses meets existing or future community demands and needs and objectives of the Town Master Plan;
- ii. General statement as to how common open space is to be owned and maintained and how it will meet the applicable criteria set forth in this Section;
- iii. The expected completion date of the new community development;
- iv. If the development is to be phased, a general statement of how the phasing is expected to proceed with regard to time and sequential factors. This may include a schedule of construction commencement and completion dates of major improvements. Whether or not the development is to be phased, the development plan shall show the intended total project. If phasing is proposed, the plan shall show how the phasing criteria set forth in this Section will be met; and
- v. Evidence to demonstrate the petitioner's competence to undertake the organizational and financial aspects of the project.

B. Planning Board Review

1. Upon receipt of a petitioner's development plan of a new community development, the Director of Planning shall transmit a copy of the plan and accompanying documentation to the Town Engineer, Highway Superintendent, the school districts and such other agencies as the Director may deem appropriate for their review, report and recommendation. Such officials and agencies shall each, within 30 days from receiving the development plan and documentation, furnish to the Planning Board a report pertinent to their respective jurisdictions and concerns.

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2. The Planning Board shall review the petitioner's development plan and related documents and evaluate the reports enumerated above. Within 60 days following the petitioner's submission of the development plan and data to the Planning Board, the Planning Board shall furnish to the Town Board and petitioner either its finding that the development plan complies with the regulations, standards and criteria prescribed by this Section or a finding of any failure of such compliance and a recommendation that the development plan be approved, disapproved or modified.
3. If in any such evaluation the Planning Board finds that any submission requirements, regulations, standards or criteria prescribed by this Section are inapplicable because of unusual conditions of the new community development or the nature and quality of the proposed design, it may recommend to the Town Board that an adjustment in such regulations, standards or criteria be made for the development or a proposed site in the development.
 - a. A favorable report shall include a recommendation to the Town Board that a public hearing be held for the purpose of considering the creation of a NCD. It shall be based on the following findings which shall be included as part of the report:
 - i. The proposed development plan meets the purpose of a NCD as expressed in 5-2-1;
 - ii. The proposed development plan meets all the requirements of §§ 5-2-3 and 5-2-4 through 5-2-5B;
 - iii. The proposed development plan is conceptually sound in that it meets present and future community needs;
 - iv. There are adequate services and utilities available or proposed to be made available in the construction of the development; and
 - v. The proposed development plan is consistent with the Town Master Plan.
 - b. An unfavorable report shall state clearly the reasons therefore and, if appropriate, point out to the petitioner what changes might be necessary in order to receive a favorable report. The petitioner may, within 10 days after receiving an unfavorable report, file an application for a NCD with the Town Clerk. The Town Board then shall hold a public hearing for a NCD and shall render a decision within 60 days after filing of such application.

C. Town Board Action

Either upon receipt of a favorable report from the Planning Board as described in subsection 8-15-2 or at any time following the submission of a proposed development plan (making the applicable requirements of § 5-2-2) by the Director of Planning in the case of proceeding on the Town Board's initiative, the Town Board shall schedule a public hearing and give notice in accordance with § 8-2-3, Notice and Public Hearings for the purpose of considering the creation of a NCD in accordance with the procedures established under the NYS Town Law or other applicable law. In the case of proceedings initiated by a petitioner under subsection 8-15-1, the Town Board shall hold a public hearing for a NCD and render a decision within 60 days of the receipt of the favorable report from the Planning Board. The published notice of any public hearing scheduled to consider the creation of a NCD under this Section shall state that the proposed development plan, with a list of all property

ownerships within the district (listed by house number, name of owner, street name and tax number), and a map of the proposed district, showing the proposed use classification areas and property line of all parcels of land included in district areas, are available for public examination in the office of the Town Clerk, prior to the hearing and thereafter until such time as the Town Board shall act to approve or disapprove the creation of the district.

D. Zoning for District

The determination by the Town Board of whether to create a NCD shall be based on its review and approval of a development plan. Where the Town Board has acted on its own initiative, such approval shall include the making of the findings specified in paragraph 8-15-2C(1) of this Section. Upon the creation of a NCD in such a manner, the Zoning Map shall be notated. The Town Board may, in order to protect the public health, safety, welfare and environmental quality of the community, attach to its zoning resolution additional conditions or requirements consistent with the purposes and requirements of this Section for the petitioner to meet. If such additional conditions or requirements are proposed, the petitioner shall be given notice in writing of such additional conditions or requirements at least 15 days prior to the creation of the NCD. Such rezoning shall apply to all lands within the boundaries of the NCD, provided that in order to protect the interests of owners of lands in said district which have not been purchased for or otherwise firmly committed to the new community development contemplated by the development plan, the substantive zoning requirements and the zoning procedures which were applicable to any such nonacquired or noncommitted lands prior to such rezoning shall be deemed incorporated in this Section so as to remain applicable to said lands until such acquisition shall occur or until such firm commitment shall be accepted, at which time such prior requirements and procedures shall cease to be applicable and the new community requirements and procedures of this Section shall become applicable. In considering any petition for rezoning of any such lands submitted prior to such acquisition or firm commitment, the Planning Board and Town Board shall include in their evaluation the compatibility of the petitioner's proposed use with the use of such lands contemplated by the development plan approved by the Town Board.

E. Site Plan Approval

1. Application for Site Plan Approval

After the Town Board creates a NCD and approves a development plan on its own initiative or on application, a site plan application or applications covering all or portions of the district intended for new community development under the development plan shall be submitted to the Town Board and Planning Board. The petitioner shall be the entity which was the principal owner of the new community site, as contemplated in subsection 8-15-1 above at the time of such Town Board approval of the development plan, or the designee of such entity. All of the lands covered by such site plan application shall be owned, controlled or otherwise accepted by such principal owner or its designee. The area covered by said application is referred to as the "proposed site." The application shall be accompanied by the information required on the development plan, including the necessary modifications or changes previously required, and by the following more

detailed information in 10 copies prepared by licensed or accredited engineer, surveyor, architect or landscape architect, as appropriate.

a. Site Plan

The following new information shall be included on an accurate site plan at a scale of at least one inch equals 100 feet:

- i. Title of drawing and name of development, if any, covered by the site plan, including the name of the petitioner and person who prepared the drawing, North point, scale and date.
- ii. Location of survey datum and name of surveyor.
- iii. Boundaries of the proposed site and its acreage.
- iv. The lines of existing and proposed vehicular, bicycle and pedestrian circulation systems within, connecting to and immediately adjoining the proposed site.
- v. All street names, including stub streets. No street name change shall be made following site plan approval unless approved by the Planning Board.
- vi. Preliminary layout of proposed property and lot lines, including property which is to be offered for dedication or other disposition for public ownership and use with the purpose indicated, and property that is proposed to be reserved by deed covenant for common use.
- vii. Location, proposed use, type, floor area and height of all buildings, location of all parking and service areas with access drives thereto; location, uses and proposed improvements of all open reservations.
- viii. Topography at one-foot contour levels.
- ix. Existing wet and dry watercourses and direction of flow.
- x. Location of all existing and proposed site improvements, including drains, culverts, retaining walls and fences; description of method of water supply and sewage disposal and capacity and location of such facilities; location and proposed development of buffer areas; general location, material and approximate size of all architectural monuments and permanent signs; size and general design of street lighting fixtures.
- xi. Provision for all stormwater management, including retention areas, open stormwater facilities and underground tiled drainage as well as drainage channels both proposed and to remain, including data or gradients of the new system relative to existing facilities. This shall include all ditches, ponds and like facilities, including the acre-feet and/or cubic-foot-per-second capacity of such facilities where applicable. Such facilities shall provide, by the combination of storage and/or improved stream flow, completely for the stormwater on the proposed site plan area and shall provide the land or other facilities necessary to permit water movement from adjacent properties. To meet this requirement, such facilities may be augmented by appropriate facilities located outside the site plan area which are committed to be in service upon the completion of the development described by the site plan.

- xii. An overlay showing soil types and their stratification and areas, if any, with moderate to high susceptibility to ponding and moderate to high susceptibility to erosion. For areas with potential erosion problems, the overlay shall also include an outline and description of existing vegetation and the program to be undertaken to correct potential erosion problems. In addition another overlay of the proposed improvement shall be provided and shall describe the following:
 - a) Location and type of floodproofing measures where they are needed, e.g., backyard drainage, fill locations and elevations. Indication of floodproofing measures for buildings planned for flood hazard areas.
 - b) Existing inventory and plans to preserve topsoil, deal with seasonal high groundwater table problems, stabilize cut and fill banks and provide for open space and the preservation of valuable natural vegetation, woodland, grassland, wetland, marshland, unique natural areas and wildlife resources.
 - c) Preliminary construction plans and specifications for all public improvements, including construction detail sheets which shall show the following information:
 - d) Preliminary profiles showing existing and proposed elevations along the center lines of all streets. Where a proposed street or streets, the elevation along the center line of the existing street or streets, within 100 feet of the intersection, shall be shown. All elevations shall be referenced to establish United States government or approved local bench marks where they exist, within one-half mile of the boundary of the site plan area.
 - e) Preliminary plans and profiles showing the locations and a typical cross section of street pavements, including curbs and gutters, sidewalks, manholes and catch basins; the locations of street trees, street lighting standards and street signs; the locations, size and invert elevations of existing and proposed sanitary sewers, stormwater drains and fire hydrants; and the location and size of all underground utilities or structures.
 - xiii. A landscape plan indicating wooded areas and other natural features to be created and/or preserved and trees in public street rights-of-way. There shall be information provided for the Planning Board to determine whether the standards outlined in 5-2-7 are met.
 - xiv. An updated development schedule covering the site plan area. The schedule shall include the improvement of open space, the construction of buildings and structures in the open space and the construction of other improvements in the site plan area and the proposed coordination of such activities.
- b. Schematic layout of the street lighting system
 - c. A description of the proposed types of covenants running with the land and of deed restrictions, of covenants, restrictions or easements proposed to be recorded and of covenants proposed for maintenance.
 - d. An estimate of the number of bedrooms to be contained in the various types of residential units.

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- e. If the petitioner is a developer designated by the owner, a statement of the developer's experience and financial capacity to carry out the site plan development.

2. Factors for Consideration

The Planning Board's review of a site plan shall be directed to the following considerations:

- a. Extent to which the site plan embodies the goals and objectives of this Section and the development plan previously approved by the Town Board.
- b. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, channelization structures and traffic controls.
- c. Adequacy and arrangement of pedestrian traffic, access, walkway structures, control of intersection with vehicular traffic and pedestrian convenience.
- d. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- e. Location, arrangement, size and design of buildings, lighting, signs and monuments.
- f. Relation of the various uses to one another and their scale.
- g. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or deterring buffer or weather buffer between adjacent uses and adjoining lands.
- h. The adequacy of usable open space for active and passive recreation.
- i. The preservation of outstanding and/or unique natural features and the preservation and/or creation of natural woodlands, grasslands and marshland.
- j. Adequacy of facilities for sanitary waste disposal and stormwater storage and disposal, including drainage canals, ponds and water storage in relation to location in the watershed.
- k. Adequacy of open space lands for public ownership and use offered for dedication or other disposition to the town or other public entity.
- l. Adequacy of structures, roadways, utilities and landscaping in areas with moderate to high susceptibility to flooding, ponding and/or erosion.
- m. Protection of adjacent properties against noise, glare, unsightliness or other objectionable features.
- n. Capacity of proposed public facilities and services to serve projected needs of the new community.
- o. Adequacy of existing public facilities and services to serve projected needs of the new community.
- p. Adequacy of school sites and facilities to serve the new community.

3. Action on Site Plan Application

Within 62 days following close of its public hearing on a site plan, the Planning Board shall act on it and deliver to the Town Board and the petitioner a report of its action. In determining its action, the Planning Board may seek advice and assistance as needed from the Town Attorney with respect to all types of covenants, restrictions and easements to be recorded and covenants

for maintenance and from the Town Engineer, Highway Superintendent and any other persons or agencies. If, in its review of the site plan, the Planning Board finds that any regulations, standards or criteria prescribed by this Section are inapplicable because of unusual or unforeseen conditions affecting the proposed site plan development or because of the nature of quality of the proposed design, it may recommend to the Town Board that an adjustment be made in such regulations, standards or criteria consistent with the purposes of this Section as applied to the proposed site plan development. The Town Board also may allow such adjustments upon its own initiative. The Planning Board's report shall include a written statement stating whether or not the site plan is approved, accompanied by a copy of the appropriate minutes of the Planning Board, including exhibits and submissions made a part of the record, and by a separate detailed statement of the basis for any Planning Board determination of noncompliance with any substantive criterion, standard or regulation of this Section. A copy of such report shall be delivered to the petitioner promptly following such approval or disapproval of the site plan. Within 30 days of the receipt of a favorable report of the Planning Board or within 30 days following the delivery to the Town Clerk of a petitioner's request for Town Board review by an unfavorable report by the Planning Board or review by the Town Board if the Planning Board has not acted during the 60-day period specified above for such Planning Board action, the Town Board shall act to approve or disapprove the site plan. In any event, if the Town Board does not approve or disapprove the site plan within 90 days following the initial submission of the site plan to the Planning Board and the Town Board under subsection A, the petitioner may notify the Town Board by delivery to the Town Clerk of written notice of its intent to proceed with construction as if the site plan has been approved. If the Town Board does not approve or disapprove the site plan within 10 days following the delivery of such notice to the Town Clerk, the site plan shall be deemed to have been approved by the Town Board for all purposes under this Section.

4. Town Board Procedures

In taking any actions or conducting any proceedings relating to the responsibilities of the Town Board under subsection C above, the Town Board shall act as the local public body responsible for administering the substantive criteria, standards and regulations of this Section. The Town Board shall keep accurate minutes of all such actions or proceedings and shall furnish to the petitioner for site plan approval, within 10 days following any such action or proceeding, a complete copy of the minutes, including exhibits and submissions made a part of the record, describing the action or proceeding. The official record of such actions or proceedings shall include any materials or documents submitted by the petitioner to the Town Board and/or Planning Board in connection with the application for site plan approval. If the Town Board determines that a site plan does not comply with any substantive criterion, standard or regulations of this Section, then the record of such determination, to be delivered to the petitioner as aforesaid, shall include a separate statement setting forth in detail the exact nature of such noncompliance and all factors included in the basis for the Town Board's determination. After the submission of a site plan to the Town Board and Planning Board, as provided in subsection A(1), and so long as any Planning Board or Town Board procedures contemplated by this subsection A(1) shall be in progress, the petitioner shall be afforded a reasonable opportunity, on one or more occasions as circumstances require, to appear before the Town Board and/or the Planning Board

on reasonable notice to present its position concerning compliance of the proposed site plan with the substantive criteria, standards and regulations of this Section.

F. Conformity to Development Plan

It is expected that the site plan will be in substantial conformance with the goals and objectives of the development plan approved by the Town Board. However, if in the preparation of the site plan it becomes apparent that certain elements of the development plan, as it was approved by the Town Board, were infeasible and in need of significant modification, or have become so since such approval, the petitioner may incorporate the necessary development plan modifications in the site plan. The Planning Board shall then determine whether the site plan embodying such modifications is in keeping with the purpose of this Section. The Planning Board shall, as part of its report referred to in subsection 8-15-5C above, notify the Town Board and the petitioner of its recommendations in such regard, stating all of the factors involved and its reasons for recommending approval or disapproval of any such modifications. Within 30 days of such notification, or within 30 days following the delivery to the Town Clerk of a petitioner's request for review as described in subsection 8-15-5C, the Town Board shall act to approve or disapprove a site plan incorporating modifications of the development plan. The provisions of the preceding subsection 8-15-5D shall be applicable to Town Board action or proceedings under this subsection.

G. Changes in Site Plan

1. If, subsequent to the approval of a site plan, the petitioner proposes any modification other than a minor modification or to correct minor or technical omissions or inaccuracies of said site plan, the procedures set forth in subsection 8-15-5A shall be applicable to such modification, except that the materials submitted shall relate only to the modification.
2. At any time within 75 days following the initial site plan submission to the Town Board and Planning Board, the petitioner may submit to the Planning Board and Town Board site plan modifications which do not materially affect the fundamental character of a proposed site plan development, and the time periods stated in this Section shall continue to apply with respect to the overall site plan submission notwithstanding said modifications. The 90-day period for Town Board action shall be extended by an additional 10 days for each such modification submitted after the expiration of said 75-day period.

H. Commencement of Construction

1. Upon the approval of a site plan by the Town Board, or upon the expiration of the 10-day period relating to inaction by the Town Board, the petitioner or its designee may commence site improvement work for all aspects of the development covered by such site plan.
2. The following actions shall not require additional development review:
 - a. The commencement or continuation of such site improvement work;
 - b. The use or occupancy of any improvements constructed in accordance with such site plan and accompanying materials;
 - c. The connection or tie-in of such improvements to public or private improvements;

- d. The dedication or other disposition of such improvements or lands included in the site plan for public use;
- e. The construction of any public improvements;
- f. The filing of a subdivision plat with the Town and County Clerks; or
- g. The issuance of any public improvement approvals or building construction code approvals.

I. **Planning Board Action on Site Plans**

Except for lands located within Bryant Woods and the provisions of subsection 8-15-6 requiring Town Board approval or disapproval of modifications to the development plan proposed as a part of a site plan, anything contained in these regulations for the NCD to the contrary notwithstanding, the Planning Board shall have sole and exclusive jurisdiction to review and approve or disapprove, modify, change, condition or restrict any site plan and, to that end, will have and exercise all authority otherwise granted to and perform all duties imposed upon the Town Board in connection therewith.

J. **Development Phasing**

If the petitioner wishes to phase the development, the petitioner may submit only those phases the petitioner wishes to develop for site plan approval in accordance with the phasing plan. Where the overall development of an entire new community site will require more than 24 months to complete, such development shall be required to be phased. If the development is to be implemented in phases, each phase shown on a site shall have adequate provision for access, parking, open space, recreation areas and stormwater management and other public improvements in accordance with the applicable site plan approval criteria set forth in this Section. Each phase shall contain facilities to appropriately serve the functions described in the preceding sentence in the event that other phases of the new community are not constructed. Each phase shall be provided with temporary or permanent transitional features, buffers or protective areas as will prevent damage or detriment to completed phases, to future phases, to adjoining properties not in the new community site or to adjoining properties in the new community site but not to be developed in accordance with the development plan.

K. **Other Applicable Regulations**

1. **Regulations After Initial Construction and Occupancy**

For the purposes of regulating the development and use of property after completion of initial construction and occupancy, any proposed changes shall be in the form of a request for a special permit requiring Town Board approval. It shall be noted, however, that properties lying in NCDs are unique and shall be so considered by the Planning Board and Town Board when evaluating these requests, and maintenance of the intent and function of the new community and its relationship with the entire town shall be of primary importance.

2. **Subdivision Review**

Site plan review and approval under the provisions of this Section shall suffice for all Town Board and other town review of Subdivision Regulations and shall suffice to satisfy all preconditions of

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filing a subdivision plat in the form referred to in subsection (1) below, subject to the following conditions:

- a. The petitioner shall plat the entire new community development as a subdivision; however, new communities being developed in stages may be platted and filed in the same stages. Information on the final plat shall be provided in accordance with established informational requirements applied generally in the town.
- b. The petitioner shall prepare sets of subdivision plats suitable for filing with the offices of the Town and County Clerks, and the appropriate town officials shall provide such endorsements thereon or other evidences of such approval as may be necessary to effect such filing.

L. Installation of Improvements

No building permits shall be issued for construction within a NCD until public street drainage and all utility improvements are installed or a performance bond is posted in accordance with established town procedures or a firm commitment to provide such improvements is certified to the town by any public agency willing to undertake such commitment.

M. Other Ordinance Provisions

Except for site plan minor modification and those other provisions of the Zoning Ordinance specifically incorporated in this Section with the express purpose of giving them binding effect, no other procedural or substantive provisions of any other Section of the Zoning Ordinance shall apply to development in a NCD; nor shall any provision of any other town ordinance or other local law, rule or regulation which is inconsistent with or more stringent than any provisions or substantive requirements of this section be applicable to any aspect of development in a NCD to which such inconsistency or more stringent requirement applies.

N. Town Board Approval of Development Plan Amendment

A development plan, after its approval by the Town Board upon application or on the Town Board's own initiative, may be amended (other than as provided in subsection 8-15-6 above) upon the request of the entity which was the principal owner, as defined in 8-15-1 above, of the new community site at the time of Town Board approval of said development plan or upon the request of a designee of said owner designated in writing by said owner for such purpose. Such request shall be filed with the Town Clerk, accompanied by such supporting material as may be reasonably necessary to enable the Planning Board or Town Board to review such request on the basis of the applicable criteria of this Section. The Town Board shall act to approve or disapprove such request within 45 days after such filing with the Town Clerk. A public hearing shall not be required in connection with any such amendment unless the amendment contemplates a change in the provisions of this Section or in the boundaries of a NCD or a change in a use classification of the development plan. In a case where such a hearing is required, such a hearing shall be held within 45 days following such filing, and the Town Board shall approve or disapprove the requested amendment within 20 days following the hearing. If a proposed boundary change will result in the inclusion of additional lands in the NCD, the minimum area requirements of § 5-2-3 shall not be applicable to such change. All Planning Board and Town Board determinations pursuant to this subsection shall be communicated to said

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principal owner or its designee, in writing, with a detailed statement of the basis therefor. At any time before the Town Board has approved a development plan pursuant to subsection 8-15-4 hereof, said principal owner may amend its application for such approval so as to include additional land owned or controlled by him and adjacent to the land owned by him at the time of submission of the original application; and prior to such approval, the Town Board may similarly amend a development plan proposed by the Town Board on its own initiative, in order to reflect the inclusion of such additional land owned or controlled by the entity which was the principal owner, as aforesaid, at the time of the original development plan proposal by the Town Board. Land so added shall be within the originally proposed NCD boundaries.

DIV. 7.3. ENFORCEMENT

Sec. 7.3.1. Penalties For Violation

Any person who violates any provision of this Ordinance or any regulation adopted hereunder is guilty of an offense punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed 6 months, or both; for conviction of a second offense both of which were committed within a period of five years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed 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 \$700 nor more than \$1,000 or imprisonment for a period not to exceed six months, or both. Each week's continued violation shall constitute a separate violation.

Sec. 7.3.2. Administrative Procedures For Enforcement

A. General Provisions

This ordinance shall be administered by the Building and Planning Departments, the Town Clerk and such other agencies as the Town Board shall direct and shall be enforced by the Zoning Enforcement Officer. Those departments and agencies shall be provided with the assistance of such persons as the Town Board may direct.

B. Construction and Use

Building permits authorize only the use, arrangement and construction which is in compliance with this Ordinance and other applicable laws. Use, arrangement or construction not in compliance with this Ordinance or other applicable laws shall be a violation of this Ordinance.

C. Records and Reports

The Zoning Enforcement Officer shall keep, or cause to be kept, a record indexed in regard to any decision or determination reached by him in connection with the interpretation or enforcement of this Ordinance.

DIV. 7.4. NONCONFORMITIES

Sec. 7.4.1. Purpose

Within the districts established by this Ordinance or amendments that may be adopted, there exist lots, structures, uses of land and characteristics of use that were lawful before this Ordinance or amendments thereto were passed, but that would be prohibited, regulated or restricted under terms of this Ordinance or future amendments. Regulations for the continuance, maintenance, repair, restoring, moving and discontinuance of such nonconforming lots, structures, land and uses are established for the following purposes:

- A. To permit these nonconformities to continue, but to minimize any adverse effect on the adjoining properties and development;
- B. To regulate their maintenance and repair;
- C. To restrict their rebuilding if substantially destroyed;
- D. To require their permanent discontinuance if not operated for certain periods of time; and
- E. To require conformity if they are discontinued, to bring about eventual conformity in accordance with the objectives of the Comprehensive Plan and Zoning Ordinance of the Town.

Sec. 7.4.2. Nonconforming Uses

Except as authorized below, no nonconforming use of land shall be enlarged or increased nor extended to occupy a greater area of land than was occupied at the effective date of adoption or an amendment of this Ordinance; nor shall any existing conforming structure devoted to a use not permitted by this Ordinance in the district in which it is located or a nonconforming structure itself or its use, if nonconforming, be enlarged, extended, constructed, reconstructed or moved, except in changing the use of the structure to a use permitted in the district in which it is located or to make the structure conforming.

A. Restoration of a Damaged Use

1. If a nonconforming use is destroyed or damaged by fire, other casualty, act of God or by the public enemy to the extent of less than 75 percent of its assessed value immediately prior to the occurrence, it may thereafter be reconstructed or repaired and occupied. In all other cases, the nonconforming use shall be terminated and any nonconforming structure shall be demolished.
2. Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use or structure as authorized in this Section shall be made within six months of the occurrence, and the repair, replacement or reconstruction shall be completed within six months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated, and any nonconforming structure then remaining shall be demolished.

B. Superseding a Nonconforming Use by a Permitted Use

Any structure, land or structure and land in combination in or on which a nonconforming use is superseded by a permitted use shall thereafter conform to the use regulations of the district.

C. Moving a Nonconforming Use

A nonconforming use shall not be moved for any reason other than to conform to the regulations for the district in which it is located after it is moved.

D. Discontinue or Abandoning a Nonconforming Use

1. A nonconforming use discontinued or abandoned for 12 consecutive months or for 18 months during any three-year period shall not thereafter be used or occupied except in conformity with the regulations of the district in which it is located.
2. Discontinuance of the active and continuous operation of a nonconforming use, or a part or portion thereof, for a period of 12 consecutive months or 18 months during any three-year period, as the case may be, is hereby construed and considered to be an abandonment of such nonconforming use, regardless of any reservation of an intent not to abandon same or of an intent to resume active operations. If actual abandonment in fact is evidenced by the removal of buildings, structures, machinery, equipment and other evidence of such nonconforming use of the land and premises, the abandonment shall be construed and considered to be completed within a period of less than 12 consecutive months and all rights to reestablish or continue such nonconforming use shall thereupon terminate.

Sec. 7.4.3. Nonconforming Structures

Except as authorized below, no nonconforming structure shall be enlarged, extended, constructed, reconstructed or moved, except as provided in this Section.

A. Restoration of a Damaged Structure

1. If a nonconforming structure is destroyed or damaged by fire, other casualty, act of God or by the public enemy to the extent of less than 75 percent of its value immediately prior to the occurrence, it may thereafter be reconstructed or repaired and occupied. In all other cases, the nonconforming structure shall be terminated and any nonconforming structure shall be demolished.
2. Application for a building permit to repair, replace or reconstruct a partially destroyed or damaged use or structure as authorized in this Section shall be made within six months of the occurrence, and the repair, replacement or reconstruction shall be completed within six months following the issuance of the permit or the nonconforming status of the use or structure shall be terminated, and any nonconforming structure then remaining shall be demolished.

B. Enlargement of Nonconforming Structures

Nonconforming structures may be enlarged or extended, provided that the enlargement does not increase the degree of the existing nonconformity, and the enlargement or extension does not create a new nonconformity.

C. Moving a Nonconforming Structure

A nonconforming structure shall not be moved for any reason other than to conform to the regulations for the district in which it is located after it is moved.

D. Repair and Maintenance

1. On any nonconforming structure or portion of a structure containing a nonconforming use or occupancy, ordinary repair work may be done or repairs or replacements of non-bearing walls, fixtures, wiring or plumbing may be made, provided that the cubic content existing when it became nonconforming shall not be increased.
2. If a nonconforming structure or portion of a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs or maintenance and is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it may be strengthened or restored to a safe condition upon order of an official charged with protecting the public safety.

Sec. 7.4.4. Nonconforming Sites

A. Nonconforming Parking, Loading and Stacking Facilities

1. 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 and stacking regulations, may be occupied or continued without such parking and/or loading spaces being provided.
2. Any such spaces that may be provided thereafter shall comply with the regulations of this Ordinance.
3. If an existing structure, use or occupancy is altered so that there is an increase of the number of dwelling units, seating capacity or floor area, or if the use or occupancy is changed to one requiring more off-street facilities, then off-street parking, stacking and loading spaces shall be provided at least equal to the number required for the increased area for the structure or use in accordance with all provisions of this Ordinance.

Sec. 7.4.5. Nonconforming Lots of Record

A. General Provisions

1. In any S-A, R-1, R-2 or R-3 district in which single-family detached dwellings are permitted, a single-family detached dwelling and customary accessory structures may be erected on any single nonconforming lot of record at the effective date of adoption or amendment of this Ordinance, notwithstanding limitations imposed by other provisions of this Ordinance. Such

lot shall be in separate ownership and not of continuous frontage with other lots in the same ownership.

2. This provision shall apply even though the nonconforming lot of record fails to meet the requirements for area or width, or both, that are generally applicable in the district, provided that yard dimensions and requirements other than these applying to area or width, or both, of the nonconforming lot of record shall conform to the regulations for the district in which such lot is located. Variance of yard requirements shall be obtained only through action of the ZBA.
3. If two or more lots or combinations of lots or portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this Ordinance, and if all or part of the lots do not meet the requirements established for width and area, the lands involved shall be considered an undivided parcel for the purposes of this Ordinance. The provisions of this Section shall not apply if any portion of said parcel shall, after the adoption of this Ordinance or amendment, be used or divided in a manner which prevents or diminishes compliance with the requirements established by this Ordinance or amendment thereto.

Sec. 7.4.6. **Nonconforming Signs**

No sign permitted pursuant to a building permit for a sign or any sign erected and existing prior to May 23, 2006 shall be altered, rebuilt or modified unless it conforms to the requirements hereof and a new building permit for a sign is issued.

A. **Signs Eligible for Characterization as Nonconforming**

Any sign that does not comply with this Ordinance is eligible for characterization as a nonconforming sign if:

1. The sign was erected pursuant to a permit and complied with all requirements then in effect; and
2. It complies with the provisions of § 7-8.

B. **Loss of Nonconforming Status**

A nonconforming status for the sign shall terminate, if:

1. The sign is altered in any way in structure or size (except for normal maintenance);
2. The sign is relocated;
3. The sign is replaced; or
4. There is any change in the tenancy, use or occupancy of the premises served by the sign.

C. **Nonconforming Sign Maintenance and Repair**

Nothing in this Section shall relieve the owner or user of a nonconforming sign or owner of the property on which the nonconforming sign is located from complying with the provisions of this Ordinance regarding safety, maintenance and repair of signs, provided that any repainting,

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cleaning and other normal maintenance or repair of the sign or sign structure shall not modify the sign structure or copy in any way not permitted under § 9-6-2. Where signs individually or collectively in a multiple development, as defined in § 2-4, are nonconforming, one or more new wall, hanging, fascia or panel on a multi-tenant free-standing sign for an individual tenant space complying with the provisions of § 7-8 may be erected whenever the tenancy, use or occupancy of an individual establishment or enterprise changes.

PART 8.
DEFINITIONS

DIV. 8.1. GENERAL

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DIV. 8.2. TERMS

Sec. 8.2.1. Specific Terms. 8-3

DIV. 8.1. GENERAL

Sec. 8.1.1. Definition of Terms

- A. Words in this Ordinance are normally used in their ordinary English usage. Certain terms ~~shall~~ have the meanings that follow, except where the context clearly indicates a different meaning.
- B. The word "shall" is mandatory; the word "may" is permissive; "should" is to be interpreted as expressing that which is desired, but not specifically required.
- C. All words used in the singular include the plural, and all words used in the present tense include the future tense.

Sec. 8.1.2. Abbreviations

Abbrev.	Term
FAA	Federal Aviation Administration
FCC	Federal Communications Commission
FT	Feet
HVAC	Heating, Ventilation and Air Conditioning
LF	Linear feet
Min	Minimum
Max	Maximum
NIER	Non-Ionizing Electromagnetic Radiation
NYS	New York State
PDD	Planned Development District
PRD	Planned Residential District
RPZ	Reduced Pressure Zone
SEQR	State Environmental Quality Review Act
SF	Square feet
VUA	Vehicle Use Area
WTF	Wireless Telecommunications Facility
ZBA	Zoning Board of Appeals

DIV. 8.2. TERMS

Sec. 8.2.1. Specific Terms

A

ACCESSORY STRUCTURE. A subordinate structure located on the same lot with the principal structure, occupied by or devoted to an accessory use. Where an accessory structure is attached to the principal structure in a substantial manner, as by a roof, such accessory structure shall be considered part of the principal structure.

ACCESSORY STRUCTURE OF FACILITY (WTF). See §6-7-1.

ACCESSORY USE. A use which is incidental and subordinate to the principal use of the property, located on the same lot therewith.

ACTIVITY CENTER. A development area established in the Comprehensive Plan that provides a focus for surrounding neighborhoods and promotes land use objectives such as compact, pedestrian-friendly development. Such centers are higher in density and incorporate a wider range of uses than the lower density, predominantly residential areas surrounding them.

ADULT CARE FACILITY. A facility which provides temporary or long-term residential care and services to adults who, though not requiring continual medical or nursing care, are by reason of physical or other limitations associated with age, physical or mental disabilities or other factors, unable to or substantially unable to live independently. An adult care facility may provide services to nonresidents in accordance with the provisions of NY Social Services Law, Chapter 55.

ANTENNA OR ANTENNAE. See §6-7-1.

ANIMALS, DOMESTIC. Animals that are normally considered household pets, including but not limited to, dogs, cats, birds or fish.

APPLICATION. See §6-7-1.

ARCADE. A continuous passageway covered by permanent roofing that is parallel to and open to a street or public space. An arcade is open and unobstructed to a minimum height of 12 feet and is accessible to the public at all times. This term shall not include off-street parking or loading areas, driveways or open pedestrian walkways.

AUXILIARY HOUSING UNIT. A room or group of rooms within a detached single-family dwelling forming a semi-independent habitable unit, which may be occupied by elderly or disabled members of the family occupying the dwelling for separate living, sleeping, cooking or eating purposes.

AWNING. A roof-like cover with a rigid frame that cannot be retracted, folded or collapsed that is designed for protection from weather or as decorative embellishment, and which projects from a wall over a window, walkway or door.

B

BASEMENT. That portion of a building that is partly or completely underground. For application to floodplain see §7-7-4.

BED AND BREAKFAST. An overnight accommodation in a single-family detached dwelling that provides temporary lodging for the general public and that may provide meal service.

BIO-SWALE OR RAIN GARDEN. Planted depressions designed to divert surface water runoff from impervious surfaces through vegetation, soil and riprap/stone to remove silt and pollutants before runoff is discharged into local storm drains or surface waterways/water bodies.

BUILDABLE AREA. That portion of the lot remaining after required yards have been provided.

BUILDING. Any improvement having a roof supported by columns or walls for the housing or enclosure of persons, a business, animals or chattels; mobile home.

BUILDING AREA. The maximum horizontal projected area measured from the exterior of the walls of the building.

BUILDING COVERAGE. The percentage of the lot covered by both the main (principal) and accessory structures. This term does not include other impervious surfaces such as driveways.

BUILDING DEPARTMENT. The Building Department of the Town of Amherst, New York.

BUILDING HEIGHT. The vertical distance from the finished grade line at the foundation to the highest point of the roof.

BUILDING LENGTH. The horizontal length of the wall of a building.

BUILDING SEPARATION. The narrowest allowable distance between two buildings.

BUILDING SETBACK LINE (OR FRONT SETBACK). A line equidistant from the street right-of-way line, or edge of pavement for a private road, between which line and the street right-of-way no building may be built.

BUSINESS SERVICE ESTABLISHMENT. An establishment providing custodial and maintenance services to other businesses. Typical uses include sign companies, window cleaning services, janitorial services and other dwelling and building services.

BULK STORAGE. The storage of chemicals, petroleum products or hazardous materials in above ground or below ground storage containers designed for distribution or mass consumption.

C

CABARET OR THEATER, SEXUALLY ORIENTED. A building or portion of a building which provides or allows the provision of sexually oriented entertainment to its customers or which holds itself out to the public as an establishment where sexually oriented entertainment is available. Signs, advertisements or an establishment name including verbal or pictorial allusions to sexual stimulation or gratification or by references to "adult entertainment," "strippers," "showgirls," "exotic dancers,"

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"gentleman's club," "XXX" or similar terms, shall be considered evidence that an establishment holds itself out to the public as an establishment where sexually oriented entertainment is available.

CALL CENTER. A facility for the handling of customer service, technical service or telemarketing activities through electronic communications that allows less than 100 square feet per employee.

CHIEF OF POLICE. Chief of Police of the Town of Amherst, New York.

CLEAR SIGHT TRIANGLE. The triangle formed on corner lots between points on the front, side or rear lot lines at a distance from the intersection within which no visual obstruction may be constructed.

CLERK. Town Clerk of the Town of Amherst, New York.

CLUB (PRIVATE). A non-for-profit organization, not including a fraternity or sorority house, whose premises are restricted to its members and their guests.

CO-LOCATION. See §6-7-1.

COMMERCIAL IMPRACTICALITY OR COMMERCIALLY IMPRACTICAL. See §6-7-1.

COMMERCIAL RECREATION ACTIVITIES, OUTDOOR. Commercial uses, varying in size, providing daily or regularly scheduled recreation-oriented activities. Such activities may take place wholly outdoors or within a number of outdoor structures. Typical uses include facilities for tennis, racquetball, handball, basketball, baseball, football, swimming, ice-skating, golf and soccer.

COMMISSIONER OF BUILDING. Commissioner of Building of the Town of Amherst, New York.

COMPLETED APPLICATION. An application that contains all information and/or data necessary to enable an informed decision to be made with respect to an application.

COMPREHENSIVE PLAN. Materials, written and graphic, including maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development which have been adopted and may be amended by the Amherst Town Board in accordance with NYS Town Law §272-a.

CONFERENCE CENTER. A facility used for service organizations, business and professional conferences and seminars limited to accommodations for conference attendees. The accommodations can include sleeping, eating and recreation. A conference center is not designed to be only utilized by the general public for overnight purposes.

CONTRACTING OR CONSTRUCTION SERVICE. An establishment or business providing services, including but not limited to, carpentry, electrical, masonry, plumbing, heating, ventilation, air conditioning, painting, ornamental iron work, roofing and sheet metal; packing and crafting and monumental works.

COUNTY. Erie County, New York.

COURT, INNER. An unroofed, open space enclosed by four walls.

COURT, OUTER. An unroofed, open space enclosed by three walls and with one side open to a yard.

D

DAY-CARE CENTER. A place for the care of three or more persons for less than 24 hours a day, away from their homes.

DBH. The outside bark diameter at breast height. Breast height is defined as 4.5 feet (1.37 m) above the ground on the uphill side of the tree.

DEVELOPMENT AREA. An area of land permitted by this Ordinance to be developed by a single owner or group of owners, acting jointly, which may consist of a parcel or assembled parcels planned and developed as an entity.

DISPLAY PUBLICLY. The act of exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by 1) a person who is between five feet and six feet in height, with eyesight adequate to obtain a New York vehicle operator's license of any type; 2) standing on a street, highway, or public sidewalk, or on the property of others, or from the parking lot or any other portion of the premises that is open to members of the public other than adults who have been admitted to the business in accordance with management policies.

DOG DAY CARE FACILITY. A commercial facility for the supervised care of dogs for periods of less than 24 hours a day, not to include facilities that provide boarding, breeding or selling of dogs, or facilities whose primary source of revenue is licensed veterinarian services.

DORMITORY. A structure specially designed for a long-term stay by students of a college, university, or nonprofit organization for the purpose of dividing rooms for sleeping purposes. Common kitchens and some common gathering rooms for special purposes may also be provided.

DWELLING. A building or portion of a building designed or occupied exclusively for residential and permitted accessory uses. The term dwelling shall not be deemed to include a hotel, motel, bed & breakfast, hospital, nursing home, dormitory, or fraternity or sorority house.

DWELLING, MULTIFAMILY. A building or portion of a building containing three or more dwelling units and designed or used for occupancy by three or more families living independently of each other.

DWELLING UNIT. A room or group of rooms within a building forming a single habitable unit which may be occupied by a single family for living, sleeping, cooking and eating purposes. A dwelling unit may be attached or detached.

E

ENCOUNTER CENTER, SEXUALLY ORIENTED. A business or enterprise that, as one of its principal purposes, offers: physical contact between two or more persons when one or more of the persons is in a state of nudity or semi-nudity.

ENGINEER. Town Engineer of the Town of Amherst, New York.

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ENTERTAINER, SEXUALLY ORIENTED. Any person paid as an employee, contractor, subcontractor, or agent of the operator of a cabaret who frequently appears in a state of semi-nudity at any establishment regulated by this chapter.

ENTERTAINMENT, SEXUALLY ORIENTED. Any of the following activities, when performed by a sexually oriented entertainer at a sexually oriented business: dancing, singing, talking, modeling (including lingerie or photographic), gymnastics, acting, other forms of performing, or individual conversations with customers for which some type of remuneration is received.

F

FACADE FRONTAGE. The percentage of the width of a building facade which faces a public street relative to the lot width.

FACADE, STREET. A facade facing a public street, parking area or pedestrian walkway.

FAMILY. Any number of individuals living together as a single housekeeping unit; 1) who are related by blood, marriage or adoption; or 2) although not related by blood, marriage or adoption, whose living arrangements are the functional equivalent of a traditional family.

FARM. A single parcel of land 5 acres or more in size on which an owner or tenant carries on agricultural pursuits, including but not limited to, the raising of crops, dairying pursuits or the raising of livestock or poultry or the keeping of bees.

FLOOR AREA. The total horizontal area of a building as outlined by its exterior main walls, not including any space the habitation of which is prohibited by any law, built-in or attached garages, porches or terraces.

FLOOR AREA, GROSS PUBLIC. The total area of the building accessible or visible to the public, including showrooms, motion picture theaters, motion picture arcades, service areas, behind-counter areas, storage areas visible from such other areas, restrooms (whether or not labeled "public"), areas used for cabaret or similar shows (including stage areas), plus aisles, hallways, and entryways serving such areas.

FOOTCANDLE. The amount of light that is produced by a candle at the distance of one foot. A footcandle is also the equivalent of one lumen per square foot.

FRATERNITY OR SORORITY HOUSE. A place of residence other than a hotel, dormitory, or rooming house that is operated by a nationally chartered membership organization or a local chartered organization; is used, occupied, and maintained for persons enrolled in a college, university, or other educational institution; which is recognized and subject to controls by such institution; and is located entirely on the campus of that institution.

FREESTANDING SIGN. A sign supported by structures or supports that is placed on, or anchored in, the ground and that is independent from any building or other structure and includes ground signs, message center signs, pole signs and subdivision identification signs.

G

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

GARAGE, STORAGE. A main or accessory enclosed building with doors, other than a private garage, used for parking or temporary storage of motor vehicles, boats and trailers.

GARAGE, REPAIR. A main or accessory building used for purposes of repairing motor vehicles, boats and trailers; a service garage if accessory to an automobile salesroom.

GROUP DEVELOPMENT. Two or more structures containing attached residential units or nonresidential structures, or a combination thereof. Structures need not be on individual lots.

GROUND-FLOOR AREA. The maximum horizontal area of a building at the ground level, excluding open porches, terraces and steps and attached or built-in garage areas.

H

HEIGHT. See "building height."

HEIGHT (WTF). See §6-7-1.

HOME OCCUPATION. An occupation carried on in a dwelling unit by the resident thereof; provided that the use is limited in extent and incidental and secondary to the use of the dwelling unit for residential purposes and does not change the character thereof.

HOSPICE. A structure other than a hospital or nursing home in which a minimum of two terminally ill persons are regularly lodged and furnished with meals and nursing care and which has been granted a certificate of approval to operate as a hospice pursuant to the Public Health Law or any successor regulating state law.

I

IMPERVIOUS COVERAGE. The percentage of the area of a lot that is covered by surfaces which do not readily absorb rainwater, including, but not limited to: buildings, sidewalks, plazas and paved parking areas

INDOOR RECREATION FACILITY. An indoor facility designed for sports and recreation activities including, but not limited to, golf, basketball, baseball, football, soccer, ice skating, tennis or swimming.

INTERIOR LANDSCAPED AREA. Landscaped area located entirely within the parking area of a site including landscaped islands, divider medians and yard area at least five feet wide in excess of the minimum required yard for Parking Areas 7,500 square feet or less (approximately 15 spaces).

INTERMEDIATE CARE FACILITY. A facility approved by the NYS Department of Health to provide health-related care and services to persons who because of their physical or mental condition require institutional care, in addition to board and lodging, but who do not have such an illness, disease, injury, or other condition as to require the institutional care and services provided only by a hospital

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or nursing home, providing such facility meets standards of safety and sanitation in accordance with state and federal requirements in addition to those applicable to nursing homes under state law.

K

KENNEL. Any premises on which four or more dogs more than four months old are kept.

L

LARGE DECIDUOUS TREE. See "Tree, large deciduous."

LAW. Law, ordinance, rule or regulation of the federal state, county and town governments, as appropriate.

LINGERIE MODELING STUDIO. An establishment or business which provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples or small groups in one or more rooms, where the room(s) used for modeling is an area smaller than 1,000 square feet each.

LIVESTOCK. Any animals raised for food or product. In addition, they include the following, regardless of purpose:

5. All animals with hooves, either single or split;
6. All members of the ovine (sheep), bovine (cows and cattle), caprine (goats), equine (horses and ponies), and swine (pigs and hogs) families;
7. Emus, rheas, and ostriches; and
8. All poultry (chickens, roosters, turkeys, ducks, geese and the like).

LOT. A parcel of land for a structure, use and the accessory structures or uses customarily incident to it, including such open spaces as are required by this Ordinance and such open spaces as are arranged and designed to be used in connection with such structure. When part of an existing conforming lot is conveyed by or to the Town of Amherst Industrial Development Agency for a project involving the enlargement of an existing structure or construction of an additional structure which enlargement or additional structure is to be owned by the agency or occupied by its lessee of the existing structures, design regulations for the district shall be deemed not violated if the enlarged structure complies with those regulations as applied to the entire lot.

LOT AREA. The horizontal land area within lot lines.

LOT, CORNER. A parcel of land having lot lines at the junction of two or more streets or having lot lines on the same street forming an interior angle of intersection not more than 135 degrees.

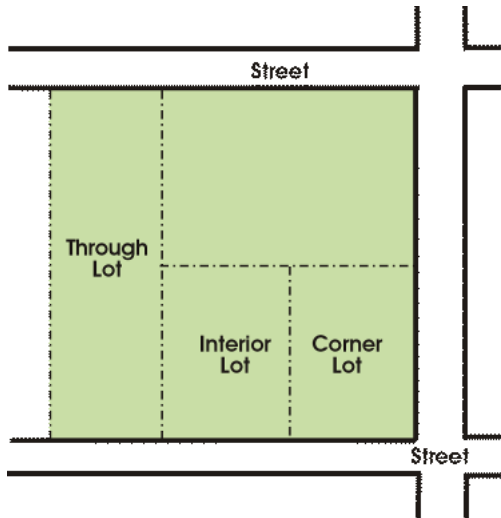
LOT, INTERIOR. A lot other than a corner lot.

LOT LINE. Any boundary line of a lot.

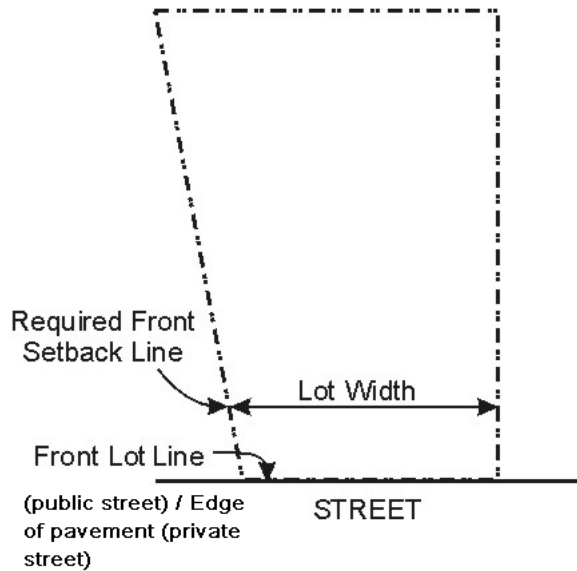
LOT MEASUREMENTS. See §2-5, Measurements and Exceptions.

LOT OF RECORD. Land designated as a separate parcel on a plat map or deed filed or recorded in the office of the Clerk of Erie County, New York. See also "Nonconforming Use, Structure or Lot of Record."

LOT, THROUGH. An interior lot which has frontage on more than one street.



LOT WIDTH. The horizontal distance of a lot measured along the building line at right angles to the mean lot depth line.



M

MANUFACTURED HOME. A structure transportable in one or more sections that, in the traveling mode, is a minimum of eight feet in width or a minimum of 40 feet in length or, when erected on site, is a minimum of 320 square feet in floor area. A manufactured home was built on or after June 15, 1976 on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities. Plumbing, heating, air conditioning and electrical systems are contained in the home. The term "manufactured home" shall also include any structure that meets all the requirements of this definition except the size requirements and with

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respect to which the manufacturer voluntarily files a certification required by the Federal Department of Housing and Urban Development (HUD) and complies with the standards established under the National Manufactured Housing and Safety Act of 1974, as amended. The term "manufactured home" shall not include any self-propelled recreational vehicle. A manufactured home shall bear a signifying conformance to the design and construction requirements of HUD, Manufactured Home Construction and Safety Standards, 24 CFR Part 3280.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

MASSAGE. Touching, stroking, kneading, stretching, friction, percussion, and vibration, and includes holding, positioning, causing movement of the soft tissues and applying manual touch and pressure to the body (excluding an osseous tissue manipulation or adjustment).

MASSAGE PARLOR. Any business offering massages that is operated by a person who is not a state licensed "massage therapist" or that provides massages by persons who are not state licensed massage therapists by the State Board of Massage Therapy, Office of the Professions, New York State Education Department, under Title VIII, Education Law, Article 155 Massage Therapy.

MEDIA. Anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything which is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, CD-ROMS, other magnetic media, and undeveloped pictures.

MEDIA, SEXUALLY EXPLICIT. Magazines, books, videotapes, movies, slides, CD-ROMs or other devices used to record computer images, or other media which are distinguished or characterized by their emphasis on matter depicting, describing or relating to "sexual conduct" or "specified anatomical areas" (separately defined).

MEDIA STORE, SEXUALLY ORIENTED. A retail sales and services establishment that rents and/or sells media, and that meets any of the following three tests:

1. More than thirty percent (30%) of the gross public floor area is devoted to sexually oriented media; or
2. More than thirty percent (30%) of the stock in trade consists of sexually oriented media; or
3. It is advertised, marketed, or holds itself out in any form as "XXX," "adult," "sex" or otherwise as a sexually-oriented business.

MEDIA STORE WITH SOME SEXUALLY ORIENTED MEDIA. A retail sales and services establishment that rents and/or sells media, and that meets either of the following two tests:

1. More than ten percent (10%) but no more than thirty percent (30%) of the gross public floor area is devoted to sexually oriented media; or
2. More than ten percent (10%) but no more than thirty percent (30%) of the stock in trade consists of sexually oriented media.

MINOR UTILITIES. See "Utilities, minor."

MIXED USE. A building or group of buildings designed to accommodate a combination of interrelated land uses, which includes a mix of two or more of the following uses: retail, services, office, residential or civic/public uses.

MOBILE HOME. A movable or portable dwelling unit that was built prior to June 15, 1976 (with or without a label certifying compliance with NFPA, ANSI or a specific state standard) and designed and constructed to be towed on its own chassis, comprised of frame and wheels, connected to utilities, and designed and constructed without a permanent foundation for year-round living, excluding travel trailers.

MODELING STUDIO, SEXUALLY ORIENTED. An establishment or business that provides the services of live models modeling lingerie, bathing suits, or similar wear to individuals, couples, or small groups in a space smaller than 600 feet.

MODIFICATION OR MODIFY (WTF). See §6-7-1.

MOTION PICTURE OR VIDEO ARCADE, SEXUALLY ORIENTED. Any business that provides booths, cubicles, stalls or compartments which is smaller than 150 square feet in floor area, which is designed, constructed or used to hold or seat customers, and which is used for presenting sexually oriented motion pictures or viewing publications by any photographic, electronic, magnetic, digital or other means or medium (including, but not limited to, film, video or magnetic tape, laser disc, CD-ROM, books, magazines or periodicals) for observation by customers therein.

MOTION PICTURE THEATER, SEXUALLY ORIENTED. A cinema or motion picture theater which shows hard-core sexually oriented features on more than half the days that it is open, or which is marketed as or offers features described as "adult," "XXX," or sexually oriented

MULTIPLE DEVELOPMENT. Four or more offices, commercial or industrial establishments or enterprises or combinations of such uses thereof, that are located in a single building; or one or more such offices, establishments or enterprises or combinations of such uses located thereof in two or more buildings developed or to be developed as part of an integrated development.

N

NEW MANUFACTURED HOME PARK OR SUBDIVISION. Manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads, is completed on or after the effective date of floodplain management regulations adopted by a community.

NONCONFORMING USE, STRUCTURE OR LOT OF RECORD. Lots, structures, uses of land and characteristics of use that were lawful before this Ordinance or amendments thereto were passed, but that would be prohibited, regulated or restricted under terms of this Ordinance or future amendments. The definition of nonconforming expressly does not include any illegally established use or structure.

NUDITY OR STATE OF NUDITY. The showing of the human male or female genitals, pubic area, vulva, anus, anal cleft or cleavage with less than a fully opaque covering, the showing of the female breast

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with less than a fully opaque covering of any part of the areola or nipple, or the showing of the covered male genitals in a discernibly turgid state. See also "Semi-nude."

NURSING HOME. A building used for the accommodation and care of persons with, or recuperating from, illness or incapacity, where nursing services are provided.



OCCUPIABLE SPACE. An enclosed space within a building intended for human activities, including, but not limited to living, working, eating or sleeping, which meet the required building codes for such spaces.

OFFICE. The use of a building or a portion of a building for the provision of executive, consulting, professional, management, or administrative services. Typical uses include, but are not limited to, administrative offices and services including advertising, accounting, architecture, archival services, design, engineering, financing, government, human health care, insurance, investment, law, medical laboratory testing service, personnel, property management, real estate, secretarial services, telephone answering, travel, and business offices of public utilities, organizations and associations, or other use classifications when the service rendered is that customarily associated with office services.

OPEN SPACE. An area unobstructed by buildings from the ground upward, except for walks, paths, landscaping or other site features in public, common or other private ownership. Yards of individual lots occupied by dwellings shall not constitute open space.

OPEN SPACE, COMMON. A parcel or parcels of land or an area of water or a combination of land and water within the site, privately owned and designed and intended for the use and enjoyment of two or more households residing in the site, or in specified portions of the site or other users if permitted by the owners of the common open space. Common open space may contain such structures and improvements as are necessary and appropriate for the benefit and enjoyment of persons served by such common open space.

OPEN USE. A use that creates or preserves areas intended primarily for the raising of animals and crops, conservation, and the secondary industries associated with agricultural production.

ORNAMENTAL TREE. See "Tree, ornamental."

OUTDOOR RECREATION (COMMON). Public uses, varying in size, providing daily or regularly scheduled recreation-oriented activities. Such activities may take place wholly outdoors or within a number of outdoor structures. Typical uses include facilities for tennis, racquetball, handball, basketball, baseball, football, swimming, ice-skating, golf and soccer.

OUTDOOR RECREATION FACILITY. An outdoor facility designed for sports and recreation activities including, but not limited to, golf, basketball, baseball, football, soccer, ice skating, tennis or swimming.

OUTPARCEL. A parcel of land, generally located on the perimeter of a larger parcel of commercial land that is subordinate to the larger parcel for access, parking and drainage purposes.

OWNER. As used in this Ordinance, shall include, in addition to its usual meaning, tenant, lessee, occupant or other user.

OVERLAY DISTRICT. A district classification superimposed in addition to another (basic) district classification, further regulating or limiting structures and uses otherwise permitted and regulated pursuant to the basic district classification.

P

PARK OFFICE. A small office designed to serve the needs of residents of a manufactured home park.

PARKING AREA. An area used primarily for parking, circulation and storage of vehicles including but not limited to parking lots and driveways.

PARKING ROOM. A parking area that is visually and functionally segmented into several smaller parking areas.

PATIO HOME. A single-family detached dwelling unit placed on a small lot with a rear yard that may be enclosed by a wall.

PERSON. Includes a firm, association, organization, partnership, company or corporation as well as an individual. See also §6-7-1.

PERSONAL WIRELESS FACILITY. See §6-7-1.

PERSONAL WIRELESS SERVICES OR PWS OR PERSONAL TELECOMMUNICATIONS SERVICE OR PCS. See §6-7-1.

PETITIONER. An applicant.

PLACES OF ASSEMBLY. Any space devoted to gathering together persons for amusement, athletic, civic, dining, educational, entertainment, patriotic, political, recreational, religious, social or similar purposes.

PLANNING BOARD. Planning Board of the Town of Amherst, New York.

PLANNING DEPARTMENT. The Planning Department of the Town of Amherst, New York.

PLANNING DIRECTOR. Planning Director of the Town of Amherst, New York.

PLANT NURSERY. An establishment for the growth, display or sale of trees, shrubs, flowering and nonflowering plants and materials used in indoor or outdoor planting, conducted within or without an enclosed building.

PRIMARY LIVE ENTERTAINMENT. Entertainment which characterizes the establishment, as determined (if necessary) from a pattern of advertising as well as actual performances.

PUBLIC UTILITY SERVICE STRUCTURE OR FACILITY. A building or fenced-in area containing equipment used by a public utility to provide and distribute its services.

PUBLIC WORKS CONSTRUCTION YARD. An area used on a temporary basis for the storage, assembly or processing of materials, equipment, and supplies used in the construction of a United States, New York State, Erie County or Town of Amherst public works project. The public works construction yard

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may include offices associated with the public works project. Typical projects include but are not limited to: construction, reconstruction, or repair of public infrastructure such as roadways, storm sewers, sanitary sewers, and waterlines.

R

RELIGIOUS INSTITUTION. A place of assembly used primarily as a church, synagogue, temple, mosque or other place of religious worship.

RESEARCH DEVELOPMENT FACILITY. A business that engages in research or development of innovative ideas in technology-intensive fields. Typical uses include: experimental, research and testing facilities, including but not limited to, the construction or operation of: small scale experimental and pilot plant operations; laboratories; production operations if ancillary to, or resulting from, a permitted experimental, research or testing operation; communication, navigation control, guidance systems, transmission and reception equipment; data processing equipment and systems; audio components and radio and television equipment; scientific and medical instruments; assembly testing and calibration of components, devices, systems and equipment, such as but not limited to, electronic, scientific, medical, optical, biochemical, chemical, metallurgical and pharmaceutical goods.

RESIDENTIAL CARE CENTER FOR ADULTS. A facility that provides long-term residential care and support services to mentally ill adults, provides case management and medication management services and assists residents in securing clinical vocational and social services necessary to enable the resident to continue to live in the community.

S

SADOMASOCHISTIC PRACTICES. Flagellation or torture by or upon a person clothed or naked, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed or naked.

SCREENING. A method of reducing the visual impact of one abutting use or structure from another by landscaping, walls, berms, or other appropriate means.

SEMI-NUDE OR IN A SEMI-NUDE CONDITION. The showing of the female breast below a horizontal line across the top of the areola at its highest point. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other apparel, provided the areola is not exposed in whole or in part.

SENIOR CITIZEN HOUSING. A building for senior citizens, primarily for persons 62 years old or more, who are in good physical condition and do not require physical assistance.

SERVICE STATION. An establishment engaged in the sale of motor vehicle fuel. In addition, such uses may engage in the sale of beverages, packaged foods, tobacco and similar convenience goods. Provision of road maps and other informational material to customers; provision of restroom

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facilities. Oil, grease, batteries, tires and motor vehicle accessories may be supplied and dispensed at retail and the following services may be rendered and sales made:

1. Servicing of automobiles, noncommercial trucks, motorcycles, recreational vehicles, or boats spark plugs, batteries and distributors and distributor parts; Tire servicing and repair, but not recapping or regrooving; Replacement of mufflers and tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and wiper blades, grease retainers, wheel bearings, mirrors, and the like; Radiator cleaning and flushing; Washing and polishing, and the sale of automotive washing and polishing materials; Greasing and lubrication; Providing and repairing of pumps and lines; Minor servicing and repair of carburetors; Wiring repairs; Adjusting and repairing brakes; Minor motor adjustments; Vehicle inspection.
2. Uses permissible at a service station do not include rental of motor vehicles, major mechanical and body work, straightening of body parts, painting, welding or storage of automobiles not in operating condition. A service station is not a repair garage nor a body shop.

SEX SHOP. A retail sales and services establishment that meets any of the following tests:

1. It offers for sale items from any two of the following categories: sexually oriented media; lingerie; leather goods marketed or presented in a context to suggest their use for sadomasochistic practices, sexually oriented novelties; and the combination of such items make up more than ten percent of its stock in trade or occupies more than 10 percent of its floor area; or,
2. More than five percent of its stock in trade consists of sexually-oriented toys or novelties; or,
3. More than 5 percent of its gross public floor area is devoted to the display of sexually oriented toys or novelties.

SEXUAL CONTACT. Acts of human masturbation, sexual intercourse, sodomy or bestiality, or fondling or other erotic touching of human genitals, pubic region, buttock or female breast of another person.

SEXUALLY ORIENTED BUSINESS. An inclusive term used to describe collectively: sexually oriented cabaret; sexually oriented motion picture theater; motion picture arcade; retail sales and services falling into the category of sex shop or sexually oriented media shop. This collective term does not describe a specific land use and shall not be considered a single use category for purposes of the zoning code or other applicable ordinances.

SEXUALLY ORIENTED TOYS OR NOVELTIES. 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.

SHARED PARKING STUDY. A document required for shared parking activities that addresses, at a minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

SHOPPING CENTER. Four or more offices, commercial or industrial establishments or combinations of such uses, which are located in a single building or in two or more buildings, developed as part of a single integrated development exceeding 30,000 square feet of gross floor area.

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SIGHT TRIANGLE, CLEAR. See "Clear Sight Triangle."

SIGN. A name, identification, description, display or illustration which is affixed to or painted or represented directly or indirectly upon a building, structure or piece of land which directs attention to an object, product, service, place, activity, person, institution, organization or business and the supporting members thereto.

SIGN, ADDRESS. See §7-8-3.

SIGN, AWNING. See §7-8-4.

SIGN, CONSTRUCTION. See §7-8-3.

SIGN, DIRECTORY. See §7-8-4.

SIGN, INCIDENTAL. See §7-8-3.

SIGN, FASCIA. See §7-8-4.

SIGN, FUEL PUMP. See §7-8-3.

SIGN, GROUND. See §7-8-4.

SIGN, HANGING. See §7-8-4.

SIGN, HOME OCCUPATION. See §7-8-3.

SIGN, MARQUEE. See §7-8-4.

SIGN, MESSAGE CENTER. See §7-8-4.

SIGN, POLE. See §7-8-4.

SIGN, PROJECTING. See §7-8-4.

SIGN, REAL ESTATE. See §7-8-3.

SIGN, SUBDIVISION IDENTIFICATION. See §7-8-4.

SIGN, WALL. See §7-8-4.

SIGN, WINDOW. See §7-8-3.

SMALL TREE DECIDUOUS. See "Tree, small deciduous."

SMALL WIND ENERGY SYSTEM. A wind energy conversion system consisting of a wind turbine, a tower, base and associated control or conversion electronics, which has a rated capacity of not more than 100 kilowatts and which is intended to primarily reduce the on-site consumption of utility power.

SOLAR SCREEN. A device attached to a building to provide shading for glazed areas of the building.

SPECIAL USE PERMIT. A permit for a use that is generally considered to be appropriate in a particular zoning district but because of its potential for incompatibility with adjacent uses requires individual review and may require the imposition of conditions in order to assure the appropriateness of the use in a particular zoning district.

SPECIAL USE PERMIT (WTF). See §6-7-1.

SPECIFIED ANATOMICAL AREAS.

1. Less than the completely and opaquely covered human genitals, pubic region or female breast below a point immediately above the top of the areola.
2. Human male genitals in a discernibly turgid state even if completely and opaquely covered.

STATE. The State of New York.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQR). A law adopted by the New York State Legislature as Article 8 of the Environmental Conservation Law and regulations adopted pursuant thereto; and Chapter 104 of the Code of the Town of Amherst, Local Environmental Review Law. The purpose of SEQR is to incorporate the consideration of environmental factors into the planning, review and decision-making processes of state, regional and local government agencies. SEQR requires that all agencies determine whether the actions they directly undertake, fund or approve may have a significant impact on the environment, and, if it is determined that the action may have a significant adverse impact, prepare or request an environmental impact statement.

STEALTH OR STEALTH TECHNOLOGY. See §6-7-1.

STORY. The portion of a building between the surface of a floor and the next floor above or the ceilings next above under a roof.

STREET. A public or private way which permits conducting of vehicular travel and/or affords a primary means of access by vehicles and pedestrians to abutting properties, including the entire area within the right-of-way. The term includes those ways as shown on plats filed in the office of the Erie County Clerk, whether improved or not.

1. **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.
2. **MAJOR ARTERIAL.** A high volume roadway that carries the major portion of daily trips to centers of activity in the metropolitan area. Major arterials (also called principal arterials) place a greater emphasis on mobility rather than access to land and include fully and partially controlled access facilities in three categories: Interstates, Expressways, and Streets. A major arterial serves major through movements between important centers of activities in a metropolitan area, and a substantial portion of trips entering and leaving the area. It also connects freeways with major traffic generators.
3. **MINOR ARTERIAL.** A street that connects and augments the major arterial system. Although its main function is still traffic mobility, a minor arterial performs this function at a somewhat lower level and places more emphasis on land access than does a major arterial. A system of minor arterials serves trips of moderate length and distributes travel to geographical areas smaller than those served by a major arterial.
4. **COLLECTOR.** A street that distributes trips from and channels trips to arterials. Additionally, these roadways provide access and circulation within residential neighborhoods. Collector streets provide for both access and circulation within residential, business, and industrial areas. Their access function is more important than that of arterials, and unlike arterials, their operation is not always dominated by traffic signals.

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5. **LOCAL COLLECTOR.** A street that distributes lower volumes of traffic from predominantly residential developments to collector streets and arterials. Local collectors carry through traffic, but at lower volumes than collectors.
6. **LOCAL STREETS.** A street that provides for local traffic with the highest level of property access and the lowest level of mobility. Through traffic movement is discouraged on local streets.

STREET GRADE. The slope of the street as measured between two points.

STREET LINE. The right-of-way line abutting a public street or edge of pavement abutting a private street.

STRUCTURE. A building, gas or liquid storage tank, or anything other than a fence, dumpster enclosure, vehicle use area constructed or erected which requires permanent location in or on the ground or attachment to something having such location. For application to the floodplain see §7-7-4.

T

TELECOMMUNICATION SITE. See §6-7-1.

TELECOMMUNICATIONS. See §6-7-1.

TELECOMMUNICATIONS STRUCTURE. See §6-7-1.

TEMPORARY (WTF). See §6-7-1.

TOWN. Town of Amherst, Erie County, New York, outside the Village of Williamsville, New York.

TRANSPORTATION MANAGEMENT PLAN. A document required for reduced parking that details how the petitioner will reduce parking demand at the proposed development. The following are possible elements of a transportation management plan: transportation coordinator, off-peak work hours, preferential parking and financial incentives.

TREE, LARGE DECIDUOUS. Any self-supporting woody plant of a species that normally grows to an overall mature height of at least 40 feet, usually with one main stem or trunk.

TREE, SMALL DECIDUOUS. Any self-supporting woody plant of a species that normally grows to an overall mature height of at least 15 feet, usually with one main stem or trunk.

TREE, ORNAMENTAL. Any self-supporting woody plant of a species that features flowers, bracts and/or fruits that are conspicuous by virtue of their color or size.

TOWN LAW. Chapter 62 of the NYS Consolidated Laws.

TURBINE. The parts of a small wind energy system including the blades, generator and tail.

U

UNIFIED DEVELOPMENT. A combination of uses permitted in a nonresidential district planned as an integrated entity with common access points, off-street parking, loading and stacking areas, fire lanes and other facilities and features.

UPPER-STORY DWELLING UNIT. A residential dwelling unit located above a nonresidential use.

USED OR OCCUPIED. Includes the words intended, designed or arranged to be used or occupied.

UTILITY, MINOR. Public or private infrastructure serving a limited area with no on-site personnel. Typical uses include stormwater retention and detention facilities, telephone exchanges and water and wastewater pump stations.

V

VEHICLE SALES, RENTAL AND LEASING. The sale or rental of automobiles, trucks, motorcycles, recreational vehicles, or boats. Typical uses include new and used car dealerships, motorcycle dealerships, and boat, trailer, or recreational vehicle dealerships.

VEHICLE USE AREA. An area used primarily for parking, circulation and storage of vehicles, including but not limited to, parking lots, loading areas, stacking spaces and driveways.

VISTA. A view extending into the distance but bounded by structures or public facilities.

W

WIRELESS TELECOMMUNICATIONS FACILITIES (WTF). See §6-7-1.

Y

YARD. An open space on the same lot with the building unoccupied and unobstructed by any portion of the structure from the ground upward, except as otherwise provided in this Ordinance.

YARD, EXTERIOR SIDE. A side yard located immediately adjacent to a public street right-of-way line or the edge of pavement of a private street.

YARD, FRONT. An open space extending the full width of the lot between the front lot line abutting a public right-of-way or the edge of the pavement abutting a private street and the structure setback line as established by this Ordinance. In no case shall a structure encroach into an easement area established for a private street.

YARD, REAR. The yard extending from the rear wall of the structure to the rear lot line across the full width of the structure.

YARD, REQUIRED. The minimum yard required between a lot line or edge of pavement on a private street and building line or line of any parking, loading and stacking area or any other use requiring a yard in order to comply with the zoning regulations of the district in which the zoning lot is located. A required yard shall be open and unobstructed from the ground upward, except for projections on structures as permitted in the Zoning Ordinance and except for walks, landscaping and other yard or site features.

YARD, SIDE. An open space extending from the front yard to the rear yard and of a width established by this Ordinance; the width shall be measured at right angles to its side lot line.

Z

ZERO LOT LINE HOME. A single-family detached dwelling unit positioned on one side lot line without any setback with private yards on three sides of the building, including a wider side yard comprising the equivalent of two side yards for conventional detached housing.

ZONING BOARD OF APPEALS. The Zoning Board of Appeals (ZBA) of the Town of Amherst, New York.

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