

Town of New Albion Zoning Law

Adopted
June 17, 2002

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**Adopted by the Town Board
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Gerald Pritchard, Deputy Supervisor
Loyd Chilson
Patrick Erhart
Patrick Murphy
Marilyn Wasmund

Prepared By:
The Cattaraugus/New Albion Planning Board
Michael Weishan, Chair
Patti Davison
Lynn LeFeber
Bruce Moody
Joe Pagett

With the Assistance of:
Allegany Planning Services
305 York Street
Olean, New York 14760
(716) 373-7004

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ARTICLE 1 ENACTING CLAUSE

Pursuant to the authority conferred by Section 261 of Town Law of the State of New York and for each of the purposes specified therein, the Town Board of the Town of New Albion, County of Cattaraugus and State of New York has ordained and does hereby enact the following local law regulating and restricting the location, size, and use of buildings and other structures and the use of land in the Town of New Albion.

ARTICLE 2 SHORT TITLE

This local law shall be known and may be cited as "Zoning Law of the Town of New Albion, Cattaraugus County, New York."

ARTICLE 3 INTENT AND PURPOSE

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

ARTICLE 4 RULES AND DEFINITIONS

Section 4.1: Rules

The following rules shall apply to interpreting the text of this law:

- (1) Words used in the present tense shall include the future.
- (2) Words used in the singular shall include the plural, and words used in the plural shall include the singular.
- (3) Words used in the masculine form shall include the feminine.
- (4) The word "shall" is mandatory. The word "may" is permissive.
- (5) The word "lot" shall include the words "plot," "piece," and "parcel."
- (6) The word "person" shall include an individual, firm, trust, partnership, association or corporation.
- (7) The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," and "occupied for."
- (8) The phrases "to erect," "to construct," and "to build" a building have the same meaning and include the excavation for a building foundation and the relocation of a building from one location to another.

Section 4.2 Definitions

The following words and terms, wherever they occur in this law, shall be interpreted as herein defined:

A-WEIGHTING SCALE A scale for sound measurement that is meant to simulate the subjective response of the human ear.

ABANDONMENT To cease or discontinue a use.

ACCESSORY APARTMENTS A second dwelling unit on a single-family lot, either in or added to an existing single family detached dwelling, or in a freestanding accessory building on the same lot as the principal dwelling unit. An accessory apartment provides a complete, independent living facility with provision within the accessory apartment for cooking, eating, sanitation and sleeping. Such dwelling is an accessory use to the main dwelling unit.

ACCESSORY BUILDING A building located on the same lot as a principal building and used for purposes customarily incidental to and subordinate to the principal structure.

ACCESSORY STRUCTURE A structure located on the same lot as a principal building and used for purposes customarily incidental to and subordinate to the principal structure.

ACCESSORY USE A use on the same lot with and of a nature customarily incidental and subordinate to the principal use.

ADULT USE Whenever used in this local law, the words adult use or adult uses shall apply to the following types of establishments:

- (1) **Adult Arcade:** An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors, computers, or similar machines for viewing by five or fewer persons each are used to show films, motion pictures, video cassettes, slides, or other photographic reproductions that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas.
- (2) **Adult Bookstore:** An establishment that has, as a substantial or significant portion of its stock-in-trade and offers for sale, for any form of consideration, any one or more of the following: (1) books, pamphlets, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, pictures, slides, videotapes, sound recordings, or other visual representations that are characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas; or (2) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.
- (3) **Adult Entertainment Cabaret:** A public or private nightclub, bar, restaurant or similar establishment that regularly features live performances that are characterized by the exposure of specified anatomical areas or by specified sexual activities, or films, motion pictures, video cassettes, slides, or other photographic reproductions in which more than 10 percent of the total presentation time is devoted to the showing of material that is characterized by an emphasis upon the depiction of specified sexual activities or specified anatomical areas.
- (4) **Adult Hotel/Motel:** A motel or hotel or similar business establishment offering public accommodations for any form of consideration that provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other photographic reproductions characterized by an emphasis upon the depiction or description of specified sexual activities or specified anatomical areas and that rents, leases or lets any room for less than a six-hour period or rents, leases or lets any single room more than twice in a 24-hour period.
- (5) **Adult Massage Establishment:** Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths, and where the services provided are distinguished or

characterized by an emphasis on specified sexual activities or specified anatomical areas.

- (6) **Adult Modeling Studio:** An establishment whose primary business is the provision to customers of figure models, who are so provided with the intent of providing sexual stimulation or sexual gratification to such customers and who engage in specified sexual activities or display specified anatomical areas while being observed, sketched, drawn, painted, sculptured, photographed or otherwise depicted by such customers. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in the New York State Education Law for the issuance or conferring of a diploma and is in fact authorized to issue or confer a diploma.
- (7) **Adult Motion Picture Theater:** An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides, or similar photographic reproductions are shown to an audience of any size, and in which a substantial portion of the total presentation time is devoted to the showing of material characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.
- (8) **Peep Show:** A theater which presents materials in the form of live shows, films, videotapes or computers viewed from an enclosure for which a fee is charged and which material is characterized by an emphasis on the depiction or description of specified sexual activities or specified anatomical areas.
- (9) **Adult Theater:** A theater, concert hall, auditorium, or similar establishment that presents performances in which a substantial portion of the total presentation time is devoted to the showing of material that is characterized by an emphasis on the depiction or description of specified anatomical areas or by specified sexual activities.
- (10) **Adult Video Store:** An establishment having as a substantial or significant portion of its stock-in-trade, videotapes or films for sale or viewing on the premises by use of motion picture devices, video equipment, computer equipment, coin operated machines or by other means and which materials are characterized by an emphasis on the exposure of specified anatomical areas or by specified sexual activities.
- (11) **Body Painting Studio:** An establishment or business which provides the service of applying paint or other substances, whether transparent or non-transparent, to or on the human body and which service is provided with the intent of providing sexual stimulation or sexual gratification to its customers.

AGRICULTURE The use of land for the raising or keeping of livestock or the growing of crops in the open or in a greenhouse, including any necessary accessory structures, but not including the processing of the agricultural product. Types of agriculture include dairy farming, pasturage, horticulture, floriculture, apiculture, aquaculture, viticulture, production of maple sap and maple sugar, tree farms, and mushroom farms.

AGRICULTURAL USE, GENERAL The use of land for agriculture, in which fewer than 1,000 (one thousand) animal units are located on one agricultural establishment.

AGRICULTURAL USE, INTENSIVE The use of land for agriculture, in which 1,000 (one thousand) or more animal units are located on one agricultural establishment.

AIRSTRIP Land and buildings used for the purpose of landing, taxiing, taking off or storing of private aircraft, pursuant to the regulations of the appropriate authority.

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

ANIMAL UNIT One animal unit is equal to 1,000 pounds of livestock.

AQUACULTURE Land devoted to the breeding, hatching and/or raising of fish or other aquatic plants or animals for profit.

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

AREA, LOT The total area within the boundary lines of a lot.

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-A30, A99, V, VO, VE, or V1-V30. It is also commonly referred to as the base floodplain or 100-year floodplain.

AREA VARIANCE See Variance, Area

ARTS AND CRAFTS STUDIO An accessory use to a dwelling unit, conducted by the residents thereof, where handmade crafts and arts are produced and sold. An arts and crafts studio shall house occupations such as painting, sculpting, pottery, weaving, glass-blowing, jewelry-making, woodworking, furniture making, candle-making, and similar crafts and arts, where the products are individually made by the artisan-owner.

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

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

AUTOMOBILE SALES ESTABLISHMENTS A lot, building, or structure where new or used automobiles, trucks, or motorcycles are available for sale.

BTS (Base transceiver station) The central facility that contains all the receivers, transmitters and other apparatus needed for cellular, PCS and other forms of mobile telecommunication services.

BANK An institution where money is deposited, kept, lent, or exchanged.

BAR A commercial establishment primarily devoted to the serving of alcoholic beverages, which are consumed on the premises, and where food service, if any, is incidental to the consumption of such beverages.

BARBER SHOP See Hairdressing Establishment.

BARN A building used to house animals and/or feed for those animals.

BASE FLOOD The flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT A portion of a building which is partly underground, but in which more than one-half of its height, measured from floor to ceiling, is above the average finished grade at the point where the grade meets the exterior walls of the building. (See also Cellar)

BEAUTY SHOP See Hairdressing Establishment.

BED AND BREAKFAST ESTABLISHMENT A single family dwelling in which the residents thereof provide overnight accommodation and meals to travelers. A bed and breakfast establishment shall contain a maximum of five (5) rooms available for overnight guests.

BOARD The Town Board of New Albion, County of Cattaraugus, New York.

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

BUFFER YARD A land area used to visibly separate one use from another or to shield or block noise, lights, or other nuisances by the use of landscaping and other screening devices.

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

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

BUILDING AREA See "Area, Building."

BUILDING, ACCESSORY See "Accessory Building."

BUILDING HEIGHT The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line of mansard roofs, and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Accessory roof construction such as a chimney, steeple or antenna shall not be included.

BUILDING PERMIT Written approval from the Code Enforcement Officer to develop, construct or alter a structure or building.

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

CAMPER See "Trailer."

CAMPGROUND (1) An area of land or water, used for a range of overnight camping experiences, on which are located two or more cabins, tents, trailers, shelters, houseboats or other accommodations of a design or character suitable for seasonal or other temporary living accommodations, including accessory facilities which support the use, such as administration offices and laundry facilities, but not including the use of manufactured homes on a year round basis; or

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

CELLAR A portion of a building which is wholly or partly underground and in which more than one-half of its height, measured from floor to ceiling, is below the average finished grade at the point where the grade meets the exterior walls of the building. (See also Basement).

CEMETERY Land that is set apart or used as a place for the internment of the dead.

CERTIFICATE OF COMPLIANCE A certificate issued by the Zoning Inspector that certifies that conditions specified in this zoning law have been met, that the parcel is properly zoned for the use that is proposed, and that the intended use is allowable. Said certificate shall acknowledge any adjustments to the requirements of this law granted by the Zoning Board of Appeals and/or any conditions of approval imposed by the Planning Board. Certificates of compliance will be issued after all necessary construction has been completed and prior to occupancy of the structure.

CERTIFICATE OF OCCUPANCY A permit issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building.

CIVIC FACILITY Buildings, structures, and other facilities owned and operated by the

Town of New Albion and regularly used for community meetings and other forms of public assembly.

CLUB A building or portion thereof or premises owned and/or operated by a corporation or association for a social, educational or recreational activity, but not primarily for profit or to render a service which is customarily carried on as a business. The term "club" shall also refer, where the context requires it, to the members of such organization.

CODE ENFORCEMENT OFFICER The official who is responsible for enforcing the Town's Building Code.

CO-LOCATION The practice of mounting and locating the antennas and equipment for more than one service provider at the same BTS facility site.

COMMERCIAL ESTABLISHMENT A business use or activity, at a scale greater than a home based business, involving retail or wholesale marketing of goods and services. Examples of commercial establishments include offices and retail shops.

COMMERCIAL RECREATION A recreational facility operated as a business and open to the public for a fee.

COMMERCIAL RECREATION, INDOOR A commercial recreation land use, conducted entirely within a building. Types of indoor commercial recreation include bowling alleys, athletic and health clubs, gymnasiums, skating rinks, swimming pools, tennis courts, and billiard halls.

COMMERCIAL RECREATION, OUTDOOR A commercial recreation land use, conducted out-of-doors or in a partly enclosed or screened facility. Typical uses include golf driving ranges, miniature golf, swimming pools, tennis courts, and skate parks (rollerblades, skateboards, and similar equipment).

COMMERCIAL SCHOOL A school conducted for the purpose of gain, including dancing schools, music schools, business and secretarial schools.

CONTRACTOR'S YARD A yard of any general contractor or builder where equipment and materials are stored or where a contractor performs shop or assembly work.

COVERAGE See "lot coverage."

CULTURAL FACILITY Public libraries, museums, art galleries and other similar community institutions.

DAIRY FARMING The keeping of milk-producing livestock, such as cows, goats, and sheep, for the purpose of producing milk in commercial quantities, as well as related barns, buildings, equipment and processing.

DAY CARE FACILITY, CHILD An establishment where care is provided for one or more children on a regular basis, for periods of less than 24 hours per day in a place other than the child's own dwelling unit. Programs could include those for children who are under the minimum age to attend public school and/or pre-school, after-school and school-vacation care for school-aged children.

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

DECIBEL A unit, expressed on a logarithmic scale, for measuring the relative intensity of sounds, beginning at zero for the threshold of hearing.

DEVELOPMENT Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

DOMESTIC, HOME HEALTH CARE OR MEDICAL CARE WORKER A person employed by one or more persons resident in a family, who may occupy dwelling space provided as part or all of his or her compensation without payment of rent, for the purpose of rendering domestic or home health care or medical care services solely for one or more of the residents. The dwelling space provided for a domestic or home health care or medical care worker may include a separate bedroom and bathroom, but shall not include a separate kitchen, nor shall such dwelling space include a separate entrance from the outside to the room or rooms provided for him/her.

DRIVE THROUGH WINDOW An accessory use to a commercial building, usually a bank or a restaurant, in which a customer drives his/her automobile up to an opening in the building, from which the customer transacts business without getting out of the vehicle.

DRUG STORE A store where the primary business is the filling of medical prescriptions and the sale of drugs, medical devices and supplies and nonprescription medicines, but where nonmedical products are sold as well.

DWELLING UNIT A building or portion thereof that provides complete housekeeping facilities for one family. Each dwelling unit shall have its own sleeping, cooking, and toilet facilities. A dwelling unit is designed for permanent occupancy and shall not be construed to include a hotel, motel or other such use of a transient nature.

DWELLING, SINGLE FAMILY A building that contains one dwelling unit.

DWELLING, TWO FAMILY A building that contains two dwelling units.

DWELLING, MULTIPLE FAMILY A building that contains three or more separate dwelling units.

ESSENTIAL SERVICES The erection, construction, alteration, or maintenance by public utilities or governmental agencies of collection, communication, transmission, distribution or disposal systems necessary for the furnishing of adequate public service or for public health, safety or general welfare, but not including buildings. "Essential Services" shall not include "Telecommunications Facilities."

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

FAMILY (1) One or more persons, all living together as a single, stable and bona fide housekeeping unit, so long as such persons together occupy and either own, lease or rent the whole of a dwelling unit in a family-like living arrangement and in a functional equivalent of a natural family and use all rooms and housekeeping facilities in common, and provided that no more than one domestic or home health care or medical care worker is employed on the premises.

(2) It shall be presumptive evidence that four or more persons living in a single dwelling unit who are not related by blood, marriage or legal adoption do not constitute the functional equivalent of a traditional family.

(3) In determining whether individuals are living together as the functional equivalent of a traditional family, the following criteria must be present:

- (a) The group is one which in theory, size, appearance, structure and function resembles a traditional family unit;
- (b) The occupants share the entire dwelling unit;
- (c) The occupants live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers shall not be deemed to be occupied by the functional equivalent of a traditional family;
- (d) The group shares expenses for food, rent, or ownership costs, utilities and other household expenses;
- (e) The group is permanent and stable. Evidence of such permanency and stability may include:
 - (i) The presence of minor dependent children regularly residing in the household who are enrolled in a local school;
 - (ii) Members of the household have the same address for the purposes of voter registration, driver's license, motor vehicle registration and filing of taxes;
 - (iii) Members of the household are employed in the area;
 - (iv) The household has been living together as a unit for a year or more whether in the current dwelling unit or other dwelling unit.
 - (v) Common ownership of the furniture and appliances among the members of the household
 - (vi) The group is not transient or temporary in nature.

(4) It shall be presumptive evidence that a single dwelling unit is occupied by more than one family if any one or more of the following features exist on the premises:

-
- (a) more than one mailbox, mail slot, or post office address
 - (b) more than one doorbell
 - (c) more than one gas meter
 - (d) more than one electric meter
 - (e) separate entrances for segregated portions of the dwelling unit
 - (f) partitions or locked internal doors barring access between segregated portions of the dwelling unit, including bedrooms.
 - (g) separate written or oral leases or rental agreements, or the payment of rent for portions of the dwelling unit among its owner and residents
 - (h) two or more kitchens, each of which contain a range, stove, or oven; refrigerator; and sink.

FARM STAND A use, accessory to the principal use of the lot, in which agricultural products are sold on a seasonal basis. Agricultural products includes items such as farm produce, Christmas trees, maple syrup, and wool, but does not include items such as farm implements.

FEED AND GRAIN STORAGE FACILITY A structure in which is stored agricultural produce, and which may include facilities for wholesale distribution, or an accessory retail outlet, for sale of such agricultural produce to the general public.

FENCE An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land.

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

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 (2) the unusual and rapid accumulation or runoff of surface waters from any source.

"Flood" or "Flooding" also means 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 in (1) above.

FLOOD INSURANCE RATE MAP (FIRM) An official map of the 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.

FLOOR AREA, GROSS The sum of the horizontal areas of each floor of a building, measured from the interior faces of the exterior walls or from the centerline of walls separating two buildings.

FLOOR AREA, GROSS COMMERCIAL AND INDUSTRIAL The gross floor area of a building, or portion of a building, devoted to such uses, including accessory storage areas located within selling or working space, such as counters, racks or closets and any basement floor areas devoted to retailing activities, to the production or processing of goods or to business or professional offices.

FLOOR AREA, GROSS RESIDENTIAL The gross floor area of a building, but excluding any porch, deck, verandah, unfinished attic, basement or cellar, carport, garage or sunroom (unless such sunroom is habitable at all seasons of the year).

FINISHED GRADE The elevation at which the finished surface of the surrounding lot meets the walls or supports of a building or structure. If the finished grade is not reasonably horizontal, the average elevation of all sides of the structure shall be used for purposes of computing the height of the building or structure.

FOOD PROCESSING ESTABLISHMENT A commercial establishment in which food is processed or otherwise prepared for human consumption, but the food is not consumed on the premises. A food processing establishment shall not include a commercial slaughterhouse or meat packing plant.

FORESTRY The use of land for the purpose of conservation and/or the growing and cutting of trees for the purpose of producing commercial or non-commercial wood products such as furniture and firewood, but shall not include the manufacturing or processing of such products.

FRONTAGE The minimum straight line distance between the intersection of the side lot lines and the front lot line.

FUEL OIL AND GASOLINE STORAGE The commercial storage of crude petroleum, gasoline, naphtha, benzene, benzol, kerosene, propane, compressed natural gas (CNG), or other flammable liquid that has a flash point at or below two hundred degrees Fahrenheit (closed cup tester), for wholesale sale or for delivery to customers off-site, regardless of whether the fuel is stored above the ground, underground, or in mobile tank cars or trucks.

GARAGE, PRIVATE An accessory building, or part of the principal building, which is designed and used primarily for the storage of motor vehicles that belong to the occupants of the dwelling unit with which it is associated.

GARAGE SALE See Yard Sale

GAS STATION A retail establishment where motor vehicle fuels and lubricants are sold to individuals. Light maintenance activities such as engine tune-ups and minor repairs may be conducted, but such activities shall not include collision service or painting.

GAS STATION WITH MINI-MART A place where gasoline and minor accessories such as motor oil and lubricants are sold directly to the public on the premises in combination with the sale of food items typically found in a grocery store.

GOLF COURSE A public or private area operated for the purpose of playing golf, and which may include a club house and accessory driving ranges.

GRADE, FINISHED See "finished grade."

GRADE, NATURAL The existing grade or elevation of the ground surface that exists or existed prior to man-made alterations, such as grading, grubbing, filling or excavating.

GREENHOUSE A building for the growing of flowers, plants, shrubs, trees and similar vegetation, which are sold, either at wholesale or retail, directly from the lot on which the greenhouse is located.

GROCERY STORE A retail establishment primarily selling packaged food and household supplies.

HAIRDRESSING ESTABLISHMENT A commercial establishment providing a personal service to men, women or children by shampooing, cutting, styling, tinting or treatment of hair, by giving manicures, pedicures or facial treatments or by the use of cosmetic products, and, without limiting the generality of the foregoing, includes a barber shop and beauty salon.

HEAVY EQUIPMENT STORAGE AND SERVICE An establishment where heavy machinery and equipment are stored and /or are offered for hire, and in which the machinery and equipment may be serviced and repaired. Such machinery includes excavating equipment, well-digging equipment, and farm machinery.

HEAVY EQUIPMENT SALES The sale of vehicles and other apparatus commonly used in commercial, construction, or farming enterprises, such as trucks, trailers, tractors, bulldozers, backhoes, etc.

HEIGHT See "building height."

HISTORIC RESOURCE

- (1) Any historic building, structure, facility, site or prehistoric site that is listed on the State and/or National Registers of Historic Places.
- (2) Any historic building, structure, facility site or district or prehistoric site that has been proposed by the New York Board on Historic Preservation for a recommendation to the State Historic Preservation Officer for nomination for inclusion in the National Register of Historic Places.
- (3) Any locally significant historic resource designated pursuant to Article 5-K of the New York State General Municipal Law.

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 requirements for individual listing on the National Register; or

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- (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; or
 - (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:
 - (a) by an approved state program as determined by the Secretary of the Interior, or
 - (b) directly by the Secretary of the Interior in states without approved programs.

HOME-BASED BUSINESS An accessory use of a service character, conducted within a dwelling by the residents thereof, which is clearly secondary to the use of the building for living purposes and does not change the character thereof or have any exterior evidence of such secondary use other than a small sign. A home-based business shall not occupy more than one-fourth of the gross residential floor area in said principal residential dwelling, or such equivalent in an accessory building(s), and shall not employ more than one paid assistant. Mortuary establishments, automobile body shops and automobile repair shops, retail businesses, manufacturing, restaurants, and eating establishments of any kind shall not be deemed to be home-based businesses.

HOTEL A building or group of buildings where sleeping accommodations are provided to the public for transient occupancy. A hotel may or may not include group dining facilities.

IMPERVIOUS SURFACES Surfaces that substantially reduce or prevent the infiltration of stormwater into the soil. Examples of such surfaces include buildings, roofs, and concrete or asphalt parking areas, roads, sidewalks or driveways.

INDUSTRIAL USE A business use or activity, at a scale greater than a home based business, that involves manufacturing, fabrication, assembly, warehousing, and/or storage. Examples of industrial uses include sawmills, welding establishments and research and development facilities.

INN See Hotel.

JUNK The outdoor storage or deposit of any of the following shall constitute junk:

- (1) one or more junk motor vehicles
- (2) One or more junk mobile homes
- (3) one or more pieces of farm machinery which are no longer in condition for agricultural use, except that an active agricultural use may have up to five pieces of inoperable farm machinery which are used for replacement parts for the farmer's own equipment.
- (4) one or more unusable pieces of construction equipment
- (5) one or more abandoned or inoperable household appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.

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- (6) one or more abandoned or irreparably damaged pieces of furniture including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
 - (7) disassembled automobile parts or other disassembled machinery or appliances scrap metal, paper, lumber or rags.

JUNK MOBILE HOME A structure, transportable in one or more sections, built on a permanent chassis and designed to be used as a dwelling unit, which is currently not inhabited and is no longer habitable under the New York State Uniform Fire Prevention and Building Code. Includes but is not limited to mobile homes, manufactured homes, travel trailers, campers and recreational vehicles (RVs).

JUNK MOTOR VEHICLE An unregistered, old, or secondhand motor vehicle, no longer in condition for legal use on the public highways; or, used parts or waste materials from motor vehicles which, taken together, equal in bulk one or more such vehicles. A vehicle is considered junked when it meets all of the following conditions:

- (1) It is unlicensed.
- (2) It is either stored, abandoned, wrecked, discarded, dismantled, or partly dismantled.
- (3) It is not in any condition for legal use upon the public highways
- (4) It is in such condition as to cost more to repair to operating condition than its reasonable market value at the time before such repair.

JUNKYARD The outdoor storage or deposit of any of the following:

- (1) two or more junk motor vehicles
- (2) two or more junk mobile homes
- (3) two or more pieces of farm machinery which are no longer in condition for agricultural use, except that an active agricultural use may have up to five pieces of inoperable farm machinery which are used for replacement parts for the farmer's own equipment.
- (4) two or more unusable pieces of construction equipment
- (5) two or more abandoned or inoperable household appliances, including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
- (6) two or more abandoned or irreparably damaged pieces of furniture, including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
- (7) Any combination of the above or parts of the above that total two or more items.
- (8) disassembled automobile parts or other disassembled machinery or appliances, or scrap metal, paper, lumber or rags

KENNEL Any premises on which four (4) or more domestic animals, excluding livestock, are housed, boarded, trained, bred, or raised for commercial purposes. The term "kennel" shall not include the keeping of animals in a veterinary hospital for the purpose of observation and/or recovery necessary to veterinary treatment. The term "bred" shall not mean a household pet that has not more than one litter per year per household.

LAUNDROMAT A building where coin-operated laundry machines, using only water, detergents and additives, are made available to the public.

LIBRARY A building containing printed and pictorial material for public use for purposes of study, reference and recreation.

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

LIVESTOCK Poultry, dairy and beef cattle, horses, sheep, goats, or any similar outdoor farm animal, but not including cats, dogs or other household pets.

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

LOT A parcel of land with frontage on a street or road, whether or not occupied by a building or structure, which is in one ownership.

LOT AREA See "Area, Lot."

LOT, CORNER A lot located at the intersection of, and abutting upon, two or more streets. A corner lot is not a through lot.

LOT COVERAGE The percentage of the lot area that is covered by impervious surfaces. Lot coverage includes all areas covered by buildings and structures, eaves, balconies, patios, decks, and swimming pools. Parking areas, driveways, and sidewalks shall be included in the percentage of lot coverage.

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

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

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

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

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

LUMBER AND BUILDING MATERIAL STORAGE AND SALES A building or structure in which lumber, and other building, construction and home improvement materials are offered for retail sale.

MACHINE SHOP A tool and die making facility that may contain equipment such as lathes and milling machines.

MANUFACTURING The making of goods and articles by hand or machine process. All manufacturing activities shall comply with the performance requirements set forth in Article 9 of this law.

MANUFACTURED HOME A transportable, factory-built home designed to be used as a year-round single-family dwelling that is manufactured according to the Federal Manufactured Housing Construction and Safety Standards Act of 1974 (42 United States Code Sec. 5401). A manufactured home is sometimes referred to as a "HUD Code home." The term "Manufactured Home" does not include a mobile home, trailer, or recreational vehicle.

MANUFACTURED HOME DEVELOPMENT A lot under single ownership that is designed for the placement of two or more manufactured homes.

MANUFACTURED HOME SPACE A plot of land within a manufactured home development, designed to accommodate one manufactured home.

MEDICAL CLINIC A building or structure where two or more members of the medical profession, physicians, dentists, chiropractors, osteopaths, and/or occupational or physical therapists, provide diagnosis and treatment to the general public without overnight accommodation. A medical clinic may include such uses as reception areas, offices, consultation rooms, x-ray facilities, minor operating rooms and/or a pharmacy, providing that all such uses have access only from the interior of the building.

MINING, QUARRYING, SAND AND GRAVEL EXTRACTION, STRIPPING OF TOPSOIL An open land area where sand, gravel, stone and rock fragments are mined or excavated or top soil is stripped as an industrial operation for sale or off-site use. This definition shall not include grading a lot in preparation for construction of a building.

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

MODULAR HOME Factory-built housing that is certified as meeting the New York State Building Code. A modular home is constructed on-site from components that are substantially made and assembled in a factory and that are delivered to a building site, where they are assembled and installed on a permanent foundation.

MORTUARY A building used for human funeral services. Such buildings may contain space and facilities for: (a) embalming and the performance of other services used in preparation of the dead for burial; (b) the storage of caskets and other related funeral supplies; and (c) the storage of funeral vehicles. A mortuary shall not include facilities for cremation.

MOTEL A hotel primarily for transients traveling by automobile, with a parking space on the lot for each lodging unit, and with access to each such unit directly from the outside. A motel may or may not include group dining facilities.

NATURAL LANDSCAPED AREA A landscaped area purposely left to grow in a natural state. Vegetation can include grasses and plants indigenous to the New York State area, as well as non-indigenous plants and flowers. Natural landscaped areas may be unmowed or mowed intermittently, but are maintained as needed.

NATURE PRESERVE An area maintained in a natural state for the preservation of both animal and plant life.

NON-CONFORMING BUILDING Any building, legally existing at the time of enactment of this law, which does not meet the regulations on building size or location on a lot for the district in which such building is located.

NON-CONFORMING LOT Any lot, legally existing at the time of enactment of this law, where the area, frontage and/or dimensions do not conform to the provisions of this law.

NON-CONFORMING USE A use of land or building, legally existing at the time of enactment of this law, which does not conform to the regulations of the district in which it is located, but which complied with applicable regulations at the time the use was established.

NURSERY SCHOOL A privately-owned school for two or more children ages two to five, which provides instruction as well as child care.

NURSING HOME A building in which the proprietor, either for profit or not-for-profit, supplies lodging and meals and in addition, provides nursing, medical or similar care and treatment. A nursing home includes a rest home or a convalescent home.

OIL AND GAS WELLS, TANKS AND LINES A hole and any structure appurtenant thereto, drilled into a geological formation for the purpose of extracting crude oil or natural gas, and the lines to collect these products to a temporary storage tank(s), or for storage underground. However, oil and gas wells shall not be construed to allow any processing of crude oil or natural gas.

OFFICE A building or portion of a building wherein services are performed involving predominately administrative, professional, or clerical operations. An office shall not include a retail commercial use, any industrial use, clinic, financial institution or place of amusement or place of assembly.

OPACITY The obscurance of light caused by an emission of air pollution.

OPEN SPACE An area that is intended to provide light and air, and is designed for either environmental, scenic, or recreational purposes. Open space may include, but is not limited to,

lawns, decorative planting, walkways, buffers, active and passive recreation areas, playgrounds, fountains, wooded areas, and water courses. Open space shall not be deemed to include driveways, parking lots, or other surfaces designed or intended for vehicular travel.

PARKING LOT An open area of land, other than a street, used for the temporary parking of two or more motor vehicles and available for public use whether free, for compensation, or as an accommodation for clients or customers or residents, but does not include the storing of impounded or wrecked vehicles.

PARKING SPACE An area exclusive of driveways, ramps, or columns, in which one vehicle can be parked.

PARK A public or not-for-profit facility that is predominately open space, used principally for active or passive recreation, for environmental or habitat protection or for scenic purposes.

PERSONAL SERVICE ESTABLISHMENT A business where professional or personal services are provided for gain and where the retail sale of goods, wares, merchandise, articles or things is only accessory to the provision of such services, including but not limited to the following: barber shops, beauty shops, tailor shops, laundry or dry-cleaning shops, and shoe repair shops.

PHARMACY See Drug Store.

PHOTOGRAPHIC STUDIO Premises used for portrait and commercial photography, including developing and processing of film, sale of film and photographic equipment, and repair or maintenance of photographic equipment.

PLACE OF WORSHIP A building, such as a church, chapel, temple, synagogue, or mosque, in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship. The building may include such accessory uses as a nursery school, a school of religious education, or parish hall.

PLANNED UNIT DEVELOPMENT A site upon which residential, commercial, recreational or other uses or any combination thereof may be authorized, in a flexible manner so as to achieve the goals of the Town's Comprehensive Plan.

PLANNED UNIT DEVELOPMENT DISTRICT An independent, free-standing zoning district, wherein the zoning regulations need not be uniform for each class or kind of land use, but where the use of land is in accordance with an approved planned unit development plan.

PLANNED UNIT DEVELOPMENT PLAN A proposal for planned unit development prepared in such detail and showing the information required in Article 13 of this local law, including, but not limited to, information depicted in words, maps, plans or drawings relating to proposed land uses; location and dimension of buildings; architectural features; lot sizes, setbacks and height limits; required facilities; buffers, screening, open space areas, lighting,

signage and landscaping; parking and loading; traffic circulation; protection of natural resources; public or private amenities; and adjacent land uses and physical features.

PLANNING BOARD The joint Planning Board for the Town of New Albion and the Village of Cattaraugus.

PLANT CULTIVATION Land used for the production of farm crops such as vegetables and fruits, grain, and corn, and related buildings. Plant cultivation does not include the commercial raising of animals, swine or poultry, or commercial feed lots.

PLANT NURSERY Land used for the growing of sod, flowers, bushes, trees or other gardening, landscaping or orchard stock for wholesale or retail sale.

PRINCIPAL STRUCTURE A structure in which the primary use of the lot on which the structure is located is conducted.

PRINCIPAL USE The primary purpose for which a lot is used.

PRIVATE SCHOOL A privately-owned academic or religious school, whose primary purpose is to provide an academic education for children in grades Kindergarten through Twelve.

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

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

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

REPAIR SHOP, GENERAL An establishment in which are repaired small items such as household appliances, vacuum cleaners, television sets and computers.

REPAIR SHOP, PERSONAL SERVICE An establishment in which are repaired personal items such as clothing, shoes, and jewelry.

RESEARCH AND DEVELOPMENT FACILITIES A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

RESTAURANT An establishment which is primarily engaged in serving food and beverages which are consumed on its premises by customers seated at tables and/or counters either inside or outside the building, and, as an accessory use, may be engaged in providing customers with take-out service of food and beverages for off-site consumption.

RESTAURANT, DRIVE-THROUGH An establishment that delivers prepared food and/or beverages to customers in motor vehicles, regardless of whether or not it also serves prepared food and/or beverages to customers who are not in motor vehicles, for consumption either on or off the premises.

RETAIL BUSINESS A building in which merchandise is offered for sale at retail, including storage of limited quantities of such merchandise, sufficient only to supply such store.

RINGLEMANN CHART A chart, developed and published by the US Department of the Interior, Bureau of Mines, on which the density of equivalent opacity of smoke is illustrated by increasingly dense shades of gray. The shades range from 0 for clear to 5 for completely opaque. For example, a reading of Ringlemann Number 1 indicates a twenty percent density (opacity) of the smoke observed.

ROOF, GABLE A ridged roof forming a gable at both ends of the building. A shed roof is not a gable roof.

RIDING STABLES An establishment in which horses are boarded and may also be available for hire. A riding stable may also provide lessons in riding, handling, training, and care of horses.

SAWMILL A building, structure or area where timber is cut, sawed or planed, either to finished lumber or as an intermediary step and may include facilities for the kiln drying of lumber and may include the distribution of such products on a wholesale basis.

SCENIC RESOURCE Any road, highway, lane, district or corridor designated pursuant to Article 49 of the New York State Environmental Conservation Law or any area designated a Scenic Area of Statewide Significance pursuant to the NYS Coastal Management Program.

SCHOOL A facility, either public or private, that provides a curriculum of elementary and/or secondary academic instruction, including kindergartens, elementary schools, junior high schools and/or high schools.

SELF-SERVICE STORAGE FACILITY A building or buildings used for the storage of household goods and materials, in which individuals rent self-contained storage units that are exclusively available to the individual renter.

SETBACK LINE A line within a lot, parallel to a corresponding lot line, which is the boundary of any specified front, side, or rear yard, or a line otherwise established to govern the location of buildings, structures, or uses.

SIGN Any letter, word, symbol, drawing, picture, design, device, article or object that advertises, calls attention to or indicates any premises, persons, products, businesses or activities, whatever the nature of the material and the manner of composition or construction. The term "sign" shall not include any flag, badge, or insignia of any governmental unit, nor shall it include any item of merchandise normally displayed within a window of a business.

SIGN AREA The entire face of a sign, including the advertising surface and any framing, trim, or molding, but not including the supporting structure. Also referred to as the "sign face."

SIGN, AWNING Any visual message incorporated into an awning attached to a building.

SIGN, DIRECTIONAL A sign whose message is exclusively limited to guiding the circulation of motorists or pedestrians on the site.

SIGN, ENTRY FEATURE A permanent, on-premises sign that identifies an entrance to a residential subdivision, residential complex or institutional use.

SIGN FACE See "sign area."

SIGN, FREESTANDING Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure. A freestanding sign may be of three distinct types: pole sign, post sign, or ground sign.

SIGN, GROUND A type of freestanding sign, not supported by a pole, in which the entire bottom of the sign is generally in contact with or in close proximity to the ground. The sign may be contained in or mounted on a masonry or wooden frame.

SIGN, ILLUMINATED Any sign illuminated by electricity, gas or other artificial light, either from the interior or exterior of the sign, and which includes reflective and phosphorescent light.

SIGN, OFF-PREMISES A sign advertising a use, facility, service, good or product that is not located, sold or manufactured on the same premises as the sign.

SIGN, LANDMARK An older sign of artistic or historic merit, uniqueness, or extraordinary significance to the Town, as identified by the Planning Board. This may include signs such as mail pouch tobacco signs painted on barns.

SIGN, POLE A freestanding sign that is affixed, attached or erected on a pole that is not itself an integral part of or attached to a building or structure.

SIGN, POST A freestanding sign that is attached or erected on one or two posts or stakes, and that is not attached to a building or structure.

SIGN, PORTABLE A sign, whether on its own trailer, wheels, or otherwise, designed to be movable and not structurally attached to the ground, a building, a structure or another sign.

SIGN, PROJECTING A sign which is attached to the building wall or structure and which extends horizontally more than twelve inches from the plane of such wall, or a sign which is perpendicular to the face of such wall or structure.

SIGN, ROOF A sign erected on a roof or a sign that projects above the highest point of the roofline, parapet or fascia of the building.

SIGN, SNIPE An off-premises sign that is tacked, nailed, posted, pasted, glued or otherwise attached to trees, poles, stakes, fences or other objects.

SIGN, VEHICLE A sign that is attached to or painted on a vehicle that is parked on, near, or adjacent to any property, the principal purpose of which is to attract attention to a product sold or business located on the property.

SIGN, WALL Any sign attached parallel to, but within twelve inches of, a wall, painted on the wall surface of, or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one sign surface.

SIGN, WINDOW A sign painted or affixed on glass or other window material and which is visible from the exterior of the window.

SITE PLAN A scale drawing showing the relationship between the lot lines and building or structures, existing or proposed on a lot, including such details as parking areas, access points, landscaped areas, building areas, setbacks from lot lines, building heights, and densities. See also Article 10 of this law.

SPECIALIZED ANIMAL RAISING AND CARE The primary use of land and /or buildings for the raising and care of rabbits, birds, fur bearing animals or other commercial animals of a similar nature.

SPECIAL USE Any use of land or buildings or both that require special approval from the Zoning Board of Appeals as described herein. See also Article 11 of this law.

SPECIFIED ANATOMICAL AREAS As used herein, specified anatomical areas means and includes any of the following: (1) less than completely and opaquely covered human genitals, pubic region, buttocks, anus, or female breasts below a point immediately above the top of the areolae; or (2) human male genitals in a discernible turgid state, even if completely and opaquely covered.

SPECIFIED SEXUAL ACTIVITIES As used herein, specified sexual activities means and includes any of the following: (1) the fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; (2) sex acts, actual or simulated, including intercourse, oral copulation, or sodomy; (3) masturbation, actual or simulated; or (4) excretory functions as part of or in connection with any of the activities set forth in subdivisions 1 through 3 of this subsection.

STACKING SPACE An on-site area for temporary queuing of motor vehicles while waiting for entry to any drive-in facility or auto-oriented use.

START OF CONSTRUCTION Includes "substantial improvement" and means the initiation, excluding planning and design, of any phase of a project, 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.

STORY That portion of a building included between the surface of any floor and the surface of the floor next above it, or if there is no floor above, then the space between the floor and the ceiling next above it. A basement shall be considered a story; however, a cellar shall not be considered a story.

STORY, HALF The portion of a building located wholly or in part within a sloping roof and in which there is sufficient space to provide a height between finished floor and finished ceiling of at least seven feet, six inches over a floor area equal to at least fifty percent of its total floor area.

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

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

STRUCTURE Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground.

SUBSTANTIAL DAMAGE Damage of any origin sustained by a structure in an area of special flood hazard (SFHA) 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. "Substantial Improvement" 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

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- (2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a historic structure.

TELECOMMUNICATIONS ACCESSORY STRUCTURES Non-habitable buildings or structures, such as a storage shed, used in conjunction with a tower or other telecommunications facility, and which are located on the same lot as those facilities.

TELECOMMUNICATIONS ANTENNA A specific device, the surface of which is used to transmit and/or receive radio-frequency signals, microwave signals, or other signals transmitted to or from other antennas for commercial purposes.

TELECOMMUNICATIONS FACILITY Any equipment used in connection with the provision of wireless communication services, including cellular telephone services, personal communications services, digital and/or data communication services, paging services, radio and television broadcast services and similar broadcast services. A telecommunications facility may include antenna(s), towers, principal and accessory telecommunications equipment, and accessory structures, buildings and appurtenances servicing the same.

TELECOMMUNICATIONS TOWER A structure on which one or more antenna(s) will be located, that is intended for transmitting and/or receiving radio, television, telephone, wireless or microwave communications for an FCC licensed carrier, but excluding those used exclusively for fire, police and other dispatch communications, or exclusively for private radio and television reception and private citizen's bands, amateur radio and other similar private, residential communications.

THEATER A building or part of a building devoted to showing motion pictures, or for dramatic, musical or live performances.

THEATER, DRIVE-IN A movie theater consisting of a screen or screens and parking area, where the public is able to view projected movies from a private motor vehicle.

TOWN BOARD The Town Board of the Town of New Albion.

TOWNHOUSE A building containing two or more dwelling units, each of which has primary ground floor access to the outside and which are attached to each other by common or party walls without openings. Townhouses may also be known as row houses.

TRAILER A vehicle so constructed as to be suitable for attachment to a motor vehicle for the purpose of being drawn or propelled by the motor vehicle, and capable of being used for the temporary living, sleeping or eating accommodation of persons, notwithstanding that such vehicle is jacked up. A self-propelled recreational vehicle shall also be construed to be a trailer. A trailer is not a mobile home or a manufactured home.

TRANSIENT AMUSEMENT ENTERPRISE A commercial recreational enterprise where temporary buildings or structures have been erected for the purposes of a circus, carnival or similar activity. A transient amusement enterprise shall require a permit from the Town Board.

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

USE, ACCESSORY See "Accessory Use."

USE, PRINCIPAL See "Principal Use."

USE, SPECIAL See "Special Use."

USE VARIANCE See "Variance, Use."

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

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

VETERINARY HOSPITAL A building or part thereof used by veterinarians primarily for the purposes of consultation, diagnosis and office treatment of household pets or livestock, but shall not include long-term boarding facilities for animals.

WAREHOUSE A building used primarily for the storage of goods and materials.

WELDING SHOP A business where pieces of metal are welded.

WHOLESALE BUSINESS Place of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional or professional business users, or to other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies.

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

YARD, FRONT The open, unoccupied space on a lot, which extends across the full width of the lot between the front lot line and the nearest wall or supporting member of a building or structure. Where the front wall of an enclosed porch or verandah extends in front of such building or structure, the front wall shall be deemed to be the front wall of said porch or verandah.

YARD, REAR That open area of a lot which extends across the full width of a lot between the rear lot line and nearest wall or supporting member of a principal building or structure.

YARD, SIDE That open area of a lot which extends from the front yard to the rear yard of a lot between a side lot line and the nearest wall of the principal building on the lot. If there is no

required front yard or rear yard, the side yard shall extend from the front lot line to the rear lot line.

YARD SALE The sale of personal property belonging to the occupants of the dwelling unit on whose premises the sale is conducted. See Article 9 of this law.

ZERO LOT LINE DEVELOPMENT A residential subdivision in which building lots may be provided for the erection of detached one-family dwellings having no side yard on one side of a dwelling.

ZONING INSPECTOR The official who is responsible for the administration and enforcement of this zoning law.

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

ZONING PERMIT A permit issued by the Zoning Inspector, prior to the issuance of a building permit, which certifies that a proposed structure or use meets all the regulations of this zoning law.

ARTICLE 5 GENERAL PROVISIONS

Section 5.1 General Regulations

- (A) **Uses Prohibited.** Any use not specifically permitted in this law shall be deemed to be prohibited.
- (B) **Minimum Requirements.** The provisions of this zoning law shall be held to be the minimum requirements for the promotion of the public health, safety, and welfare.
- (C) **Relationship with other Laws.** Where the conditions imposed by any provision of this zoning law upon the use of land or buildings, or upon the bulk of buildings, are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this law or any other law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive, or which impose higher standards or requirements, shall govern.
- (D) **Affect on Existing Agreements.** This law is not intended to abrogate any easement, covenant or any other private agreement, provided that where the regulations of this local law are more restrictive, or impose higher standards or requirements, than such easements, covenants or other private agreements, the requirements of this local law shall govern.

Section 5.2 Application of Regulations

(A) Application. Except as hereinafter provided:

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

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

Section 5.3 Lot Area and Dimension

(A) Contiguous Parcels. When two or more parcels of land, each of which lacks adequate area and dimension to qualify for a permitted use under the requirements of the use district in which they are located, are contiguous and are held in one ownership, they shall be used as one zoning lot for such use.

(B) Lots or Parcels of Land of Record. Any single lot or parcel of land, held in one ownership, which was of record at the time of adoption of this law, that does not meet the requirements for minimum lot width and area, may be utilized for a permitted use, provided that yards, courts or usable open spaces are not less than seventy-five (75) percent of the minimum required dimension of areas.

Section 5.4 Access to Public Street

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

ARTICLE 6 ESTABLISHMENT OF DISTRICTS

Section 6.1 Districts

For the purposes and provisions of this local law, the Town of New Albion establishes the following zoning districts:

A-F	Agricultural-Forestry District
A-R	Agricultural-Residential District
R-1	Rural Residential District
B-1	General Business District
I-1	General Industrial District
I-2	Special Industrial District
SFHA	Special Flood Hazard Areas

Section 6.2 Zoning Map

The locations and boundaries of the aforesaid zoning districts are hereby established on a scaled map, entitled "Town of New Albion Zoning Map," which is kept on file by the Town Clerk. This map is hereby made a part of this zoning law and shall have the same force and effect as if the zoning map together with all notations, references and other information shown thereon were fully set forth and described herein.

Section 6.3 Interpretation of District Boundaries

In the event uncertainty exists regarding the boundaries of any of the aforesaid zoning districts shown on the zoning map, the following rules shall apply:

- (A) Where district boundaries are indicated as approximately following the centerlines or right-of-way lines of streets, highways, railroads, public utility easements, or watercourses, said boundaries shall be construed to be coincident with such lines.
- (B) Where district boundaries are indicated as approximately following the Town of New Albion boundary line, lot lines, or the projections thereof, said boundaries shall be construed to be coincident with such lines or projections thereof.
- (C) Where district boundaries are indicated as approximately parallel to the Town of New Albion boundary line, lot lines, right-of-way lines, or projections thereof, said boundaries shall be construed to be parallel thereto.
- (D) When a district boundary is questionable, it shall be referred to the Planning Board, who shall, to the best of their ability, establish the exact boundary, using the above criteria. This determination shall be considered final and conclusive, and may only be altered by

amendment to the zoning map by the Town Board, following the procedures established in Article 15 of this law. A copy of the zoning map showing the determination of the Planning Board shall be kept on file by the Town Clerk.

Section 6.4 Lots Located in More Than One Zoning District

- (A) If a lot is divided into more than one zoning district, the regulations for each zoning district shall govern each portion of the lot, provided, however, that each portion of the lot separately conforms to all regulations of the applicable zoning district. In the event that the lot cannot conform to all regulations for each zoning district, the regulations for the district in which the greater part of the lot lies shall govern. However, no lot shall have more than one single family dwelling.
- (B) In all cases where a district boundary line is located not farther than 15 feet away from a lot line of record, the regulations applicable to the greater part of the lot shall be deemed to apply to the entire lot.

Section 6.5 Zoning of Streets, Alleys, Public Ways, Waterways and Rights-of Way

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

ARTICLE 7 DISTRICT USE REGULATIONS

Section 7.1 Zoning Districts

(A) Agricultural-Forestry District (A-F)

(1) Purpose

The purpose of the Agricultural-Forestry District is to protect and promote agricultural activities and forestry, while at the same time protecting environmentally sensitive land, such as floodplains and steep slopes. An additional purpose of this district is to provide an opportunity for low density residential development that is consistent with an absence of municipal water and sewer services. A further purpose of this district is to provide an opportunity for recreational activities.

(2) Permitted Uses

The following uses are allowed in the Agricultural-Forestry District:

- Agricultural uses, general
- Arts and crafts studios
- Dairy farming
- Farm stands
- Forestry
- Greenhouses
- Home-based businesses
- Manufactured homes
- Nature preserves
- Parks
- Plant Cultivation
- Plant Nursery
- Riding Stables
- Single-family dwellings

(3) Special Permitted Uses

The following uses are permitted in the Agricultural-Forestry District upon obtaining a Special Use Permit from the Planning Board:

- Accessory Apartments
- Agricultural uses, intensive**
- Airstrip**
- Bed and Breakfast establishments

Campgrounds
Cemeteries
Contractor's yard
Clubs
Commercial recreation (indoor and outdoor)
Drive-in theaters
Essential Services
Feed and Grain storage facilities
Golf courses
Heavy Equipment sales
Heavy Equipment storage and service
Kennel
Lumber and Building material storage and sales
Manufactured home parks
Mining, quarrying, sand and gravel extraction, stripping of topsoil
Oil and gas wells, tanks and lines
Public Uses
Sawmills
Specialized animal raising and care
Townhouses
Two-family dwellings

(4) Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the Agricultural-Forestry District, and which are located on the same lot as the principal building or use, shall be allowed. For agricultural activities, accessory structures may be located on any lot where agricultural activities are permitted, as long as said structure meets the setback and other requirements of this local law.

(B) Agricultural-Residential District (A-R)

(1) Purpose

The purpose of the Agricultural-Residential District is to provide an opportunity for low density residential development that is consistent with an absence of municipal water and sewer services, while at the same time protecting agricultural activities. A further purpose of this district is to provide an adequate location for telecommunications facilities.

(2) Permitted Uses

The following uses are permitted in the Agricultural-Residential District:

- Agricultural uses, general
- Arts and crafts studios
- Dairy farming
- Farm stands
- Forestry
- Greenhouses
- Home-based businesses
- Manufactured homes
- Nature preserves
- Parks
- Plant Cultivation
- Plant Nursery
- Riding Stables
- Single-family dwellings

(3) Special Permitted Uses

The following uses are permitted in the Agricultural-Residential District upon obtaining a Special Use Permit from the Planning Board:

- Accessory Apartments
- Bed and Breakfast Establishments
- Campgrounds
- Clubs
- Commercial Recreation (indoor and outdoor)
- Essential Services
- Golf courses
- Public Uses
- Telecommunications facilities
- Townhouses
- Two-family dwellings

(4) Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the Agricultural-Residential District, and which are located on the same lot as the principal building or use, shall be allowed. For agricultural activities, accessory structures may be located on any lot where agricultural activities are permitted, as long as said structure meets the setback and other requirements of this local law.

(C) Rural Residential District (R-1)**(1) Purpose**

The purpose of the Rural Residential District is to allow moderate density residential development consistent with the availability of municipal water and/or sewage systems.

(2) Permitted Uses

The following uses are allowed in the Rural Residential District:

Single-family dwellings

Arts and crafts studios

Home-based businesses

Manufactured Homes

Parks

(3) Special Permitted Uses

The following uses are allowed in the Rural Residential District upon obtaining a Special Use Permit from the Planning Board:

Accessory Apartment**Agricultural uses, general**

Bed and Breakfast establishments

Essential Services

Nursing Homes

Places of worship

Public Uses

Townhouses

Two-family dwellings

(4) Permitted accessory uses and structures

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the Rural Residential District, and which are located on the same lot as the principal building or use, shall be allowed. For agricultural activities, accessory structures may be located on any lot where agricultural activities are permitted, as long as said structure meets the setback and other requirements of this local law.

(D) General Business District (B-1)**(1) Purpose**

The purpose of the General Business District is to permit and encourage opportunities for local retail businesses and services that meet the needs of the residents of the Town of New Albion and adjacent areas.

(2) Permitted Uses

The following uses are allowed in the General Business District:

- Banks and Financial Institutions
- Clubs
- Day Care facility, child & adult
- Drug Stores
- Grocery Stores
- Hairdressing establishments
- Hotels and motels
- Laundromat
- Medical clinics
- Offices
- Parks
- Personal Service establishments
- Photographic studios
- Places of worship
- Repair shops, general
- Repair shops, personal service
- Restaurants
- Retail businesses

(3) Special Permitted Uses

The following uses are permitted in the General Business District upon obtaining a Special Use Permit from the Planning Board:

- Apartments over first floor commercial uses
- Automobile Body Shop
- Automobile Repair Shop
- Automobile Sales Establishment
- Bars
- Commercial schools
- Drive-through windows
- Essential services
- Food processing establishment
- Gas station

Gas station with mini-mart
Lumber and building material sales
Mortuary
Multiple-family dwelling
Nursery schools
Nursing homes
Public uses
Restaurants, drive-through
Single-family dwellings
Theaters
Veterinary Hospital
Warehouses
Wholesale Businesses

(4) Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the General Business District, and which are located on the same lot as the principal building or use, shall be allowed.

(E) General Industrial District (I-1)

(1) Purpose

The purpose of the General Industrial District is to allow heavy commercial and light industrial uses that do not adversely affect the health, safety and welfare of the residents of New Albion and which promote job opportunities and a balanced economic base for the community.

(2) Permitted Uses

The following uses are permitted in the General Industrial District:

Agricultural uses, general
Contractor's Yard
Feed and Grain Storage facility
Food processing establishment
Forestry
Heavy Equipment Storage and Service
Lumber and Building Material Storage and Sales
Machine Shops
Manufacturing
Offices
Research and Development Facilities
Self service storage facilities
Warehouses

Welding establishments
Wholesale Businesses

(3) Special Permitted Uses

The following uses are permitted in the General Industrial District upon obtaining a Special Use Permit from the Planning Board:

Automobile Body Shop
Automobile Repair Shop
Essential Services
Fuel Oil and Gasoline Storage
Heavy Equipment Sales
Public Uses

(4) Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the General Industrial District, and which are located on the same lot as the principal building or use, shall be allowed. For agricultural activities, accessory structures may be located on any lot where agricultural activities are permitted, as long as said structure meets the setback and other requirements of this local law.

(F) Special Industrial District (I-2)

(1) Purpose

The purpose of the Special Industrial District is to allow heavy commercial and light industrial uses that do not adversely affect the health, safety and welfare of the residents of New Albion and that promote job opportunities and a balanced economic base for the community. An additional purpose of this district is to allow uses that are compatible with the adjacent sewage treatment plant.

(2) Permitted Uses

The following uses are permitted in the Special Industrial District:

Agricultural uses, general
Contractor's Yard
Feed and Grain Storage facility
Food processing establishment
Forestry
Heavy Equipment Storage and Service
Lumber and Building Material Storage and Sales

Machine Shops
Manufacturing
Offices
Research and Development Facilities
Self service storage facilities
Warehouses
Welding establishments
Wholesale Businesses

(3) Special Permitted Uses

The following uses are permitted in the Special Industrial District upon obtaining a Special Use Permit from the Planning Board:

Adult Uses
Automobile Body Shop
Automobile Repair Shop
Essential Services
Public Uses

(3) Permitted Accessory Uses and Structures

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the Special Industrial District, and which are located on the same lot as the principal building or use, shall be allowed. For agricultural activities, accessory structures may be located on any lot where agricultural activities are permitted, as long as said structure meets the setback and other requirements of this local law

(G) Table of Permitted Uses

Table 7.1, Permitted Uses, which is located on the following pages, is a compilation of all permitted and special permitted uses for each district defined above. It is an integral part of this zoning law.

Table 7.1: Table of Permitted Uses

TYPE OF USE	USE DISTRICT					
	A-F	A-R	R-1	B-1	I-1	I-2
AGRICULTURAL						
Agricultural uses, general	P	P	SP		P	P
Agricultural uses, intensive	SP					
Dairy Farming	P	P				
Farm stands	P	P				
Feed and grain storage facility	SP				P	P
Forestry	P	P			P	P
Greenhouses	P	P				
Kennel	SP					
Plant Cultivation	P	P				
Plant Nurseries	P	P				
Riding stables	P	P				
Specialized animal raising and care	SP					

RESIDENTIAL	A-F	A-R	R-1	B-1	I-1	I-2
Single family dwelling	P	P	P	SP		
Two-family dwelling	SP	SP	SP			
Multiple family dwelling				SP		
Manufactured homes	P	P	P			
Manufactured home parks	SP					
Accessory Apartments	SP	SP	SP			
Apartments over 1 st floor commercial uses				SP		
Townhouses	SP	SP	SP			

GENERAL	A-F	A-R	R-1	B-1	I-1	I-2
Accessory Uses	P	P	P	P	P	P
Adult Uses						SP
Airstrip	SP					
Cemeteries	SP					
Clubs	SP	SP		P		
Day care facility, child & adult				P		
Essential Services	SP	SP	SP	SP	SP	SP
Golf courses	SP	SP				
Medical Clinics				P		
Mortuaries				SP		
Nature Preserve	P	P				
Nursery School				SP		
Nursing Homes			SP	SP		
Parks	P	P	P	P		
Places of Worship			SP	P		
Public Uses	SP	SP	SP	SP	SP	SP
Self-service storage facilities					SP	SP
Telecommunications facilities		SP				

COMMERCIAL	A-F	A-R	R-1	B-1	I-1	I-2
Art and Craft Studio	P	P	P			
Automobile body shop				SP	SP	SP
Automobile repair shop				SP	SP	SP
Automobile sales establishment				SP		
Banks and financial institutions				P		
Bars				SP		
Bed & Breakfast establishments	SP	SP	SP			
Campgrounds	SP	SP				

Commercial recreation, indoor	SP	SP				
Commercial recreation, outdoor	SP	SP				
Commercial schools					SP	
Drive-through windows					SP	
Drug store					P	
Gas station					SP	
Gas station with mini-mart					SP	
Grocery store					P	
Hairdressing establishment					P	
Heavy Equipment sales	SP					SP
Heavy Equipment storage & service	SP					P
Home-based business	P	P	P			
Hotels and motels					P	
Laundromats					P	
Lumber and building materials sales	SP				SP	P
Offices					P	P
Personal service establishment					P	
Photographic studio					P	
Repair shops, general					P	
Repair shops, personal service					P	
Restaurants					P	
Restaurants, drive-through					SP	
Retail businesses					P	
Theaters					SP	
Theaters, drive-in	SP					
Veterinary hospitals					SP	

INDUSTRIAL	A-F	A-R	R-1	B-1	I-1	1-2
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Contractor's yard	SP				P	P
Food processing establishment				SP	P	P
Fuel oil and gasoline storage					SP	
Machine shop					P	P

Manufacturing			P	P
Mining, quarrying, sand and gravel extraction, stripping of topsoil	SP			
Oil and gas wells, tanks and lines	SP			
Research and development facilities			P	P
Sawmills	SP			
Warehouses		SP	P	P
Welding establishments			P	P
Wholesale business		SP	P	P

Key to Abbreviations:

- P Permitted
- SP Permitted by Special Use Permit
- No letter Not permitted

Zoning Districts:

- A-F Agricultural-Forestry District
- A-R Agricultural-Residential District
- R-1 Rural Residential District
- B-1 General Business District
- I-1 General Industrial District
- I-2 Special Industrial District

Section 7.2 Dimensional Regulations

(A) Table of Dimensional Regulations

Table 7.2, Table of Dimensional Regulations, contains the minimum lot size, minimum lot width, minimum yard requirements, maximum building height and maximum lot coverage for each land use district. This table is hereby declared to be an integral part of this law.

(B) Exceptions to Height Regulations

The height limitations contained in Table 7.2, Table of Dimensional Regulations, do not apply to spires, belfries, cupolas, water tanks, ventilators, chimneys, silos, grain elevators, antennas, radio or television towers, or any appurtenances usually required to be placed above the roof level and not intended for human occupancy.

(C) Measurement of Required Yards

The minimum front yard for a lot shall be determined by measuring at right angles from the nearest street right-of-way line. The rear and side yards shall be determined by measuring at right angles from the rear and side property lines, respectively.

(D) Yards to be Open

Where yards are required in this law, they shall be construed as permanently maintained open spaces. They shall not be less in depth, or width, or area than the minimum specified, and they shall be, at every point, open and unobstructed from the ground to the sky, except as specifically mentioned in these regulations.

(E) Corner Lots

Whenever a side yard is adjacent to a street, both the front and side yards shall be considered to be front yards, and the standards for front yards shall apply.

(F) Through Lots

In the case of a lot running through from one street to another street, the frontage on which the majority of the buildings in the block face shall be considered the primary frontage for the purposes of this law. In cases where there is no clearly defined frontage, the owner, when applying for a building permit, shall specify which lot line is considered the primary frontage. The rear portion of such lot shall, however, be treated as a front for purposes of determining required setbacks and locations of permitted structures and uses.

(G) Accessory Buildings

- (1) No accessory building or structure may be located in a required front yard or a required side yard.
- (2) No accessory building or structure may be located closer to the rear lot line than the applicable side yard requirements. Where an accessory building is erected in the required rear yard on a corner lot, it shall not be located closer to any street than the required front yard distance.
- (3) No accessory building may be located within ten (10) feet of any other building or structure.
- (4) Notwithstanding any other provision of this law, clothesline poles, flag poles, garden trellises, fences and retaining walls shall be exempt from any setback requirements.
- (5) Notwithstanding any other provision of this law, for agricultural activities, accessory structures may be located on any lot where agricultural activities are permitted, as long as said structure meets the setback and other requirements of this local law.

(H) Visual Clearance at Driveways and Intersections

- (1) On corner lots no fence, wall, hedge or other structure or planting interfering with visibility from motor vehicles shall be erected, placed, maintained, continued or permitted within the triangular areas formed by the intersecting street lines on such lots and a line drawn between two points thirty feet distant from the intersection, measured along said street lines.
- (2) On any lot where a private driveway enters a street, no obstruction to visibility from motor vehicles between three (3) feet above ground level and ten (10) feet above ground level shall be located within the triangular area formed by the street property line, the private drive line and a line connecting them at points ten (10) feet from their intersection.

(I) Buffer Yard

- (1) Where any business or industrial use abuts a residential district, the required yard shall contain a landscaped area adjacent to the residential use, a minimum of eight (8) feet in width. The buffer yard shall contain hedges or trees and shall be planted with grass or other planting material. The entire area shall be attractively maintained and kept clean of all debris and rubbish. Parking, storage of merchandise or trash, or other such uses shall not be allowed in the buffer yard.

- (2) In areas where a buffer yard is required but a natural buffer is considered to be impractical or inappropriate, an opaque fence may be substituted in whole or in part for a natural buffer, provided its specifications are approved by the Planning Board.
- (3) All fences and vegetative material shall conform to the visual clearance requirements in Section 7.2 (H).

(J) One Principal Dwelling Permitted Per Lot

In all districts where single family dwellings are permitted, a lot held in single ownership may be developed for such use in accordance with the requirements of this law, provided that there shall be no more than one principal dwelling unit on each lot. If two or more single-family dwellings are proposed to be located on the same lot, the lot shall be subdivided and each new lot shall meet all the requirements of this law.

(K) Fences in the R-1 Rural Residential District

- (1) Any fence erected in the front yard setback shall be of an open design, such as chain link, ornamental iron, rail or picket fencing. Opaque fences such as basket-weave and stockade are not permitted within the required front yard. No fence that exceeds four (4) feet in height, measured from ground level, may be erected in a front yard setback; except that an entrance feature, such as an arched trellis over a gate may exceed four feet. A clearance of six inches shall be allowed for installation purposes and shall not count in determining the height of a fence.
- (2) No fence may be erected which exceeds six (6) feet in height above ground level, except that a clearance of six inches shall be allowed for installation purposes and shall not count in determining the height of a fence.
- (3) No fence may be constructed with barbed wire, metal spikes, or any other sharp pointed materials. All chain link fences shall be installed with the knuckle portion of the fence up and with the barb portion of the fence on or near the ground. No fence may be electrified, except that a low voltage electrified wire may be buried for the purposes of confining a household pet on its owner's property.
- (4) A fence shall be constructed of one material, such as stone, wood or wrought iron. If painted, all sections of a fence on a particular lot shall be stained or painted one color, except for a complementary trim color. In general, fencing should exhibit a consistent design character for the entire lot.
- (5) The restrictions on fencing in this section shall not apply to parcels used for agriculture as defined in Article 4.

**ARTICLE 8
NON-CONFORMING BUILDINGS AND USES**

Section 8.1 Continuation of Use

Except as otherwise provided herein, any lawfully established use of a building or land existing at the time of the enactment of this local zoning law or amendments thereto may be continued, even though such use does not conform with the provisions of this local law.

Section 8.2 Discontinuance of Use

(A) Whenever any part of a building, structure or land occupied by a non-conforming use is changed to or replaced by a use conforming to the provisions of this local law, such premises shall not thereafter be used or occupied by a non-conforming use.

(B) Whenever a non-conforming use of a building or structure, or part thereof, has been discontinued, as evidenced by vacancy, for a period of twelve consecutive months, or whenever there is evident a clear intent on the part of the owner to abandon a non-conforming use, such use shall not after being discontinued or abandoned be re-established, and the use of the premises thereafter shall be in conformity with the regulations of the district in which it is located.

(C) Where no enclosed building is involved, voluntary discontinuance of a non-conforming use for a period of twelve months shall constitute abandonment, and shall not thereafter be used in a non-conforming manner.

Section 8.3 Change of Use

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

Section 8.4 Repairs and Alterations

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

Section 8.5 Extension

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

Section 8.6 Restoration

No building damaged by fire, flood or other causes to the extent of more than sixty (60) percent of its true or full value, as computed through the use of equalization rates current at the time, shall be repaired or rebuilt except in conformity with the regulations of this local law. All buildings not repaired must be razed within a period of twelve months.

Section 8.7 District Changes

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

ARTICLE 9 SUPPLEMENTARY REGULATIONS

Section 9.1 Application

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

Section 9.2 Performance Standards

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

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

(G) Vibration. No vibration shall be permitted which is discernible without instruments on any adjoining property.

(H) Smoke. Smoke that exceeds a density or opacity of Ringlemann Number 1 shall not be emitted from a vent, stack, chimney or combustion process. However, an emission that does not exceed a density or opacity of Ringlemann Number 3 is permissible for a period not to exceed six minutes in any one hour during which time the firebox is cleaned out or a new fire is being built therein.

(I) Odors. No malodorous gas or matter shall be permitted which is discernible on any adjoining property.

(J) Noise.

- (1) The maximum permissible sound pressure level of any continuous, regular or frequent source of sound produced by any activity regulated by this zoning law shall be as established for the time period and type of land use district listed below. Sound shall not exceed the following limits at the property line of said source:

Sound Pressure Level Limits Measured in dBA

	<u>7 a.m.-10 p.m.</u>	<u>10 p.m.-7 a.m.</u>
Industrial Districts	70	65
Commercial Districts	65	55
Residential Districts	55	45

- (2) The levels specified may be exceeded by 10 dBA for a single period, no longer than fifteen (15) minutes, in any one day.
- (3) Where the emitting and receiving premises are in different zoning districts, the limits governing the stricter zone shall apply to any regulated noise entering that zoning district.
- (4) Sound pressure levels shall be measured at all major lot lines, at a height of at least four feet above the ground surface. Noise shall be measured with a sound level meter meeting the standards of the American National Standards Institute, ANSI S1.2-1962 "American Standard Meter for the Physical Measurements of Sound."
- (5) Sound shall be measured in decibels (dB), using the A-weighting scale, which is abbreviated dBA.
- (6) Sound created by construction work between the hours of 6 a.m. and 10 p.m. shall be exempt from these regulations.
- (7) Sound created by agricultural activities shall be exempt from these noise regulations.

Section 9.3 Signs

(A) Purpose

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

(B) Permit Required

Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any sign without first having obtained a Sign Permit issued by the Zoning Inspector. In issuing the Sign Permit, the Zoning Inspector shall follow the procedures for reviewing and issuing zoning permits, which are contained in Article 14 of this local law.

(C) Exempt Signs

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

- (1) Any sign posted by duly constituted public authorities in the performance of their public duties.
- (2) Real Estate Signs: Temporary "For Sale" or "For Lease" signs relating to the premises on which they are posted. The sign shall contain only the name, address and telephone number of the owner or his authorized agent, or both. The sign shall not exceed eight square feet in area. Only one such sign shall be permitted for each street frontage and it may not be illuminated.
- (3) Temporary signs in a commercial district that advertise any special sale. The sign shall not be erected more than ten days prior to the sale and must be removed within five (5) days after the sale.
- (4) New business enterprises, which are awaiting erection of permanent signs, may install temporary signs, not exceeding 25 square feet in area, for a period not to exceed 30 days.
- (5) For a residence, one sign indicating the name and address of the occupant of the premises, not to exceed six square feet in area. Such sign shall not project above a roofline. It may be mounted on the building wall or pole mounted. An address sign shall not be permitted if the premises contains a sign for a home-based business.
- (6) A home based business may install one sign as permitted in Section 9.16.

- (7) A farm or other agricultural use may be allowed one identification sign, that does not exceed 32 square feet in area. The sign may be located on a silo or other structure, or may be freestanding.
- (8) For new construction or renovation, one sign indicating the project name and the names of the architect, engineer, contractor and participating public and governmental agencies, placed on the site where construction is in progress. Such sign shall not exceed 25 square feet in area and 10 feet in height. The sign shall be removed within 30 days of the completion of the construction, repair or renovation work.
- (9) Political Signs: Signs advertising a candidate for political office, or signs advertising any other ballot issue, may be posted 30 days prior to the election and shall be removed within seven (7) days after the election.
- (10) Christmas holiday decorations, including lighting, are exempt from the provisions of this local law and may be displayed in any district without a permit for the period from one week before Thanksgiving until the end of January of the following year.
- (11) Posted Signs: Signs relating to trespassing and hunting, in open areas, shall be placed such that there is a minimum of 100 feet between signs. In wooded areas "posted" signs shall be placed so that only one such sign is visible from any other sign, while facing in the same direction.
- (12) Historical markers, tablets, memorial signs, and plaques authorized by or erected by a governmental agency.
- (13) Directional signs solely indicating ingress and egress placed at driveway locations, where the sign face does not exceed three square feet in area or extend higher than four feet above ground level. Such directional signs may contain a business name, but shall not contain any advertising material. Such sign will conform in all respects with the requirements of this law.
- (14) Bulletin boards and signs for churches or other places of worship, libraries, museums, social clubs or societies, schools, community or other public buildings may be permitted, provided that the area of such sign does not exceed 15 square feet in area and such signs are set back a minimum of 15 feet from the street right-of-way line. Such signs must be erected on the same lot as the structure with which it is associated.
- (15) Window signs that meet the requirements of Section (G)(6).
- (16) Landmark signs.

(D) Prohibited Signs

- (1) All signs not expressly permitted under this local law or expressly exempt from regulation hereunder in accordance with the previous sections are prohibited. Such signs include, but are not limited to:
 - a. Off-premises signs
 - b. Roof signs
 - c. Inflatable signs or tethered balloons
 - d. Streamers, ribbons, spinners or similar devices, except flags and bunting to commemorate national patriotic holidays, which must be removed within 30 days after the holiday.
 - e. Snipe signs
 - f. Vehicle signs
- (2) No sign shall be illuminated by or contain flashing, intermittent, rotating or moving lights except to show time and temperature.
- (3) No sign may rotate or have motorized moving parts.
- (4) No sign shall impair or cause confusion of vehicular or pedestrian traffic in its design, color or placement. No sign shall impair visibility for the motorist at a street corner or intersection.

(E) General Standards

- (1) A sign, except signs erected by a governmental entity for a public purpose, shall not be attached directly or indirectly to any light standard, traffic control structure, utility pole, or tree.
- (2) All approved site plans shall include a coordinated plan for the location and size of all signs for the entire project area.
- (3) No sign shall be placed in or project into a public street.
- (4) Signs shall not be mounted on roofs or extend above the roofline, unless mounted on a parapet wall that extends above the roofline, in which case the sign may not extend above the top of said parapet.
- (5) Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel and are not more than 24 inches apart.

(F) Illumination Standards

- (1) No exterior sign shall be illuminated between the hours of 11 p.m. and 6 a.m., unless the premises on which it is located is open for business.

- (2) No sign shall contain strobe lights.
- (3) No sign shall be designed or illuminated in such a way that it affects traffic safety or is a nuisance to residential properties.

(G) Standards for Specific Types of Signs

(1) Awning sign

- a. No sign shall project from an awning.
- b. Graphics (lettering and images) may be painted or permanently affixed to the surface of the front or sides of the awning.
- c. A minimum of eight (8) feet above sidewalk level must be allowed for pedestrian clearance.

(2) Freestanding Signs

- a. Freestanding signs may have only two faces.
- b. The area of a freestanding sign shall not exceed twenty-four (24) square feet on each side.
- c. No part of a freestanding sign shall project into or over any driveway, public right-of-way or over any property line.
- d. Freestanding signs shall be located a minimum of ten (10) feet from any property line. In the event that a business use abuts a residential district, the freestanding sign shall be located a minimum of forty (40) feet from the residential property.
- e. Only one freestanding sign per parcel shall be permitted. If more than one commercial establishment is located on a lot, they shall share the advertising area on one freestanding sign.
- f. **Pole signs:**
 - i. Freestanding signs affixed to a pole may not exceed fifteen (15) feet in height. The height of the sign shall be measured from the finished grade at the location of the sign or at the main entrance to the building, whichever is lower, to the top of the sign face or pole, whichever is higher.
 - ii. There shall be a minimum clearance of eight (8) feet from the ground to the bottom of a pole-mounted sign.
- g. **Post signs** shall not exceed eight (8) feet in height and shall have a minimum clearance of two (2) feet from the ground level to the bottom of the sign.
- h. **Ground signs** shall not exceed four (4) feet in height, and shall be placed so as not to impair visibility for motorists. There is no minimum clearance between the ground and the bottom of this type of sign.

(3) Projecting Signs

- a. No part of a projecting sign shall extend into vehicular traffic areas. Any part of a projecting sign that extends over pedestrian traffic areas shall have a minimum clearance of eight feet.
- b. Projecting signs shall not extend above the level of the second floor of the buildings to which they are attached, or in any case, be higher than twelve (12) feet from the ground.
- c. Projecting signs shall have a maximum of two faces and shall have a maximum size of twenty (20) square feet per face.
- d. For a building located at a street intersection, any projecting sign shall be located a minimum of fifteen (15) feet from the corner.

(4) Portable Signs

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

(5) Wall Signs

- a. Wall signs shall not obscure architectural features of the building, such as arches, sills, moldings, cornices and transoms.
- b. A wall sign shall not extend above the lowest point of the roof, or beyond the ends of the wall to which it is attached.
- c. A wall sign shall have a maximum area not exceeding 1.5 square feet for each lineal foot of building face parallel to a street lot line, or ten (10%) percent of the wall area to which it is attached, whichever is less. In no case shall a wall sign exceed 100 square feet in area. Where a building fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.
- d. Where two or more business establishments share one building, the total allowable sign area shall be divided among the businesses, which may erect one sign each.

(6) Window Signs

- a. Window signs shall not exceed more than thirty (30%) percent of the window area in which they are displayed.
- b. Non-temporary signs hung inside windows shall be made of clear materials, such as plexiglass, with lettering painted on them.

(H) Specific Requirements for Zoning Districts**(1) Industrial Districts:**

- a. In any industrial district, each industrial or business establishment shall be permitted to erect one wall sign or one projecting sign or one awning sign. If the industrial or business establishment fronts on more than one street, the establishment may have one sign on each frontage.
- b. In addition to the wall sign, projecting sign, or awning sign, the establishment may also erect one freestanding sign.

(2) General Business District (B-1)

- a. In the General Business District (B-1), a business establishment may erect one wall sign or one projecting sign or one awning sign. If the establishment fronts on more than one street, the establishment may have one sign on each frontage.
- b. In addition to the wall sign, projecting sign, or awning sign, the establishment may also erect one freestanding sign.
- c. A business may also erect window signs that conform to the provisions above.

(3) Business and Industrial Establishments in Residential and Agricultural Districts

- a. In a residential or agricultural district, any commercial or industrial use may erect one wall sign or one projecting sign or one awning sign.
- b. A freestanding sign may be allowed by special use permit, granted by the Planning Board pursuant to the procedures in Article 11 of this local law.

(I) Miscellaneous Signs

- (1) **Entry Feature Signs:** One permanent identification sign may be allowed at the entrance to a permitted subdivision, a residential complex, or an institutional use, provided that the sign does not exceed thirty-two (32) square feet in area and four (4) feet in height. Such sign shall indicate only the name and address of the facility.
- (2) For apartment buildings, one sign, not to exceed thirty-two (32) square feet in area, may be used to indicate the name of the development. In addition, temporary signs advertising the availability of apartments may be posted.
- (3) Signs necessary for the identification, operation or production of a public utility may be erected on the premises of such public utility. Such signs shall generally conform to the requirements of the district in which the facility is located. Signs in residential districts

may not exceed six (6) square feet in area; signs in commercial or industrial districts may not exceed 24 square feet in area.

(J) Maintenance

A sign shall be maintained in a secure and safe condition. If the Code Enforcement Officer determines that a sign is not secure, safe or in good repair, written notice of this deficiency shall be given to the person who obtained the sign permit. If the defect is not corrected within the time period specified in the notice, the Code Enforcement office may revoke the sign permit.

(K) Replacement

Any sign that replaces a sign that is in existence at the time of adoption of this local law shall conform to all provisions herein.

(L) Removal of Obsolete Signs

If the business or activity which a sign advertises either moves or ceases operation, the sign(s) associated with that business or activity shall be removed within 30 days of the last day of operation at that location.

Section 9.4 Off-street Parking, Loading Areas, and Drive-through Windows

(A) General Requirements

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

All parking facilities shall meet the following requirements:

- (1) A parking space shall be a minimum of 10 feet by 20 feet, exclusive of parking aisles and driveways, shall be a visibly designated and marked space, and shall be of usable shape and surface.
- (2) Adequate access shall be provided to all parking spaces. Any area containing one or more parking spaces shall have direct access to a public street or alley or to a private street.

(B) Calculation of Required Parking Spaces

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

Whenever a major fraction (more than one-half) of a space is required, a full space shall be provided.

(C) Off-Street Parking Requirements

The number of off-street parking spaces to be provided shall not be less than the following:

Use	Parking Spaces Required
Single Family Dwelling	2 spaces per unit
Two-family Dwelling	2 spaces per unit
Multiple Family Dwellings	1.5 spaces per one-bedroom unit 2 spaces per two-bedroom unit 2.5 spaces per three-bedroom unit or greater
Hotel/Motel	1 space per guest room, plus 1 space for every three employees
Churches, Places of Worship, Theaters, Places of Assembly	1 space for every four seats
Restaurants, Bars, Clubs	1 space for each 4 persons allowed under the maximum occupancy load
Golf course	4 for each hole
Bowling alley	4 spaces for each lane
Nursery School/Day Care Center	1 space per employee, plus 2 additional spaces
Retail Uses, Repair Shops, Personal Service Establishments	1 space per 300 square feet of gross floor area
Offices	1 space per 300 square feet of gross floor area
Industrial Uses	1 space per 1,000 square feet of gross floor area, or 1 space for every two employees on the largest working shift, whichever is greater.
Warehouses	1 space per 2,000 square feet of gross floor area
Convalescent Center or Nursing Home	1 space for every three beds plus one for each two employees on the maximum working shift
Mortuary or Funeral Home	1 space for each 75 sq. ft. of gross floor area, or 1 space for every 4 fixed seats, whichever is the greater
Public swimming pool	1 space per 75 sq. ft. of gross water area, plus one space per employee on the largest shift.

(D) General Requirements for Off-Street Parking Areas

- (1) All areas devoted to off-street parking shall be so designed that no automobile is required to back into a street to obtain egress. This provision does not apply to the parking areas serving single-family and two-family dwellings.

- (2) Any lighting that illuminates off-street parking areas and driveways shall be located and arranged so that all direct rays of light fall upon the parking area only and not onto any adjoining properties.
- (3) If a parking area abuts a residential district, adequate shielding shall be provided to ensure that the adjacent residential uses are protected from glare from lighting and from car headlights. In addition, the parking area shall be set back a minimum of 6 feet from the residential lot line, and this setback shall be landscaped.
- (4) For parking areas providing spaces for more than five automobiles, a minimum four foot wide landscaped buffer strip shall be provided between any adjacent sidewalk or public right-of-way and the parking area.
- (5) To the maximum extent feasible, parking areas shall be placed to the side or rear of the building they are designed to serve, not in the front.

(E) Driveway Regulations for Parking Areas

- (1) Driveways used for ingress and egress to parking areas shall be clearly visible. Driveways that cross sidewalks shall be constructed at a 90 degree angle to the street in order to protect pedestrian safety.
- (2) Driveways shall not be located closer than 30 feet to an intersection of two public rights-of-way.
- (3) The minimum width of a non-residential driveway that provides both ingress and egress shall be 20 feet. The maximum width of such driveway shall not exceed 35 feet.
- (4) No more than two driveways entering on one street from a single commercial or industrial establishment shall be permitted.
- (5) Shared driveways for abutting commercial and/ or industrial establishments shall be encouraged.

(F) Off-Street Loading and Unloading Spaces

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

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

(G) Drive-through Windows

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

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

(H) Waiver of parking requirements

The Planning Board may waive the requirements for off-street parking, if the applicant can show that adequate on-street parking exists to serve the facility or if the applicant has entered into a legal agreement with a nearby facility to use the parking lot of that facility, and if, in the opinion of the Planning Board, the existing parking area is adequate to serve both facilities. Joint use of parking areas for facilities that have different hours of operation is encouraged.

Section 9.5 Sanitation

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

Dumping of garbage, trash or rubbish is prohibited.

Section 9.6 Temporary Buildings

(A) Non-Residential Buildings

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

Permits for temporary, non-residential buildings shall be issued by the Planning Board for a period of up to one year. Such permit may be renewed by the Planning Board for an additional period.

(B) Residential Buildings

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

Section 9.7 Areas of Special Flood Hazard (SFHA)

(A) Purpose

The purposes of this section are:

- (1) to protect human life and health;
- (2) to minimize expenditure of public money for costly flood control projects;
- (3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) to minimize prolonged business interruption;
- (5) to minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, sewer lines, and streets and bridges that are located in areas of special flood hazard; and
- (6) 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.

(B) Applicability

This section of this local zoning law shall apply to all areas of special flood hazards (SFHA) within the jurisdiction of the Town of New Albion.

(C) Basis for Establishing the Area of Special Flood Hazard

The area of Special Flood Hazard identified by the Federal Insurance Administration on its Flood Insurance Rate Map (FIRM) No. 360087 0001-0010 dated December 3, 1982, and revisions thereto, are hereby adopted by reference and declared to be a part of this local law. The FIRM is on file at the Town Hall.

(D) Permitted Uses in the Special Flood Hazard Area (SFHA)

- (1) No new development or substantial improvements shall be permitted in the Special Flood Hazard Area (SFHA) except for the following uses:
 - (a) Outdoor recreation, including parks, picnic groves, hiking and bicycle paths, and other recreational uses, excluding buildings, as approved by the Town.
 - (b) Municipal uses, including parking lots, utility crossings, bridges, maintenance of approved uses (excluding buildings), flood protection structures and devices and water course alterations, as approved by the State of New York.
- (2) All uses, including utilities, shall be located and constructed to minimize or eliminate flood damage.

(E) Permit Review

- (1) A Special Flood Hazard Area (SFHA) Development Permit shall be obtained from the Town Zoning Inspector before development of any of the above permitted uses may begin.
- (2) Application for a SFHA Development Permit shall be made on forms provided by the Town. The Zoning Inspector may require all information necessary for him/her to reach a decision on the application for a Permit. This information may include, but not be limited to, plans, in duplicate, drawn to scale and showing the nature, location, dimensions and elevations of the area in question, areas of fill, and storage of materials.
- (3) If necessary, the Town may hire a licensed engineer, registered in the State of New York, or other recognized professional, to evaluate the material contained in the application. The applicant shall reimburse the Town for any costs necessary for the review, inspection and approval of the proposed project.
- (4) The Zoning Inspector shall determine that all necessary permits have been obtained from any Federal, State, County, or local government agencies before the Town may issue a SFHA Development Permit.

Section 9.8 Manufactured Homes on Individual Lots

Subject to obtaining a building permit, a manufactured home may be permitted on any lot where a single-family dwelling unit is permitted under Article 7 of this law, provided that it conforms to the following requirements:

- (A) The manufactured home shall be the principal use on the lot. The manufactured home shall conform to all setbacks and other dimensional requirements of the zoning district in which it is located.
- (B) The manufactured home shall contain a minimum floor area of 800 square feet, excluding any garage or carport.
- (C) The Cattaraugus County Health Department shall approve, in writing, the water supply and sewage disposal systems. Approval by the County Health Department shall be received prior to the issuance of a building permit.
- (D) The manufactured home shall be installed on a permanent wall foundation that meets the manufacturer's installation requirements and all state and local codes.
- (E) All towing apparatus, wheels and exposed chassis shall be removed prior to issuance of an occupancy permit.
- (F) Skirting or solid material screening the space between the manufactured home floor and the ground shall be installed prior to the issuance of an occupancy permit. All manufactured homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home.
- (G) The manufactured home shall have a roof which is pitched so that there is at least a four-inch vertical rise for each 12 inches of horizontal run. The roof shall consist of shingles or other material customarily used for conventional dwelling roofing.
- (H) If the manufactured home or mobile home is fifteen (15) years old or older at the time an application is made for a building permit to install it on a lot, the Code Enforcement Officer shall inspect the structure to insure that it is suitable for habitation prior to issuing such permit. If the Code Enforcement Officer finds that the manufactured home or mobile home is not suitable for habitation, he/she shall deny the permit.

- (I) No more than one (1) manufactured home may be located on one lot, unless a permit has been granted for a Manufactured Home Development.

Section 9.9 Manufactured Home Developments

Where permitted by special use permit in Article 7 of this law, a manufactured home development shall conform to the following requirements:

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

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

- (1) Name and address of applicant.
 - (2) Location and legal description of the proposal.
 - (3) A complete site plan of the manufactured home development.
 - (4) Any other information deemed necessary by the Planning Board.
- (B) All manufactured home developments shall conform to the following requirements:
- (1) The development shall be located on a well-drained site, graded to insure proper drainage.
 - (2) The development shall contain a minimum of three acres.
 - (3) No more than six manufactured home spaces shall be permitted per gross acre.
 - (4) No more than one manufactured home may be placed on a manufactured home space.
 - (5) All manufactured homes placed in a manufactured home development shall contain a minimum of eight hundred (800) square feet of interior floor area.
 - (6) Manufactured home spaces shall consist of a minimum of 6,000 square feet for each space, with a minimum width of 50 feet. Manufactured home spaces shall be clearly defined. The minimum area of a manufactured home space shall not include roadways, streets, or any required buffers.
 - (7) There shall be at least a 20 foot separation between individual manufactured homes, and between manufactured homes and any permanent structure in the park.
 - (8) All manufactured homes shall front on an interior street. The street shall have a minimum hard-surfaced width of 20 feet if on-street parking will not be allowed or 28 feet if on-street parking is allowed. If the street will be dedicated to the town, it must have a minimum right-of-way width of 50 feet.
 - (9) A sidewalk, constructed to Town standards, shall be installed on one side of each street in a manufactured home development. Sidewalks shall be hard-surfaced and shall be a minimum of four feet in width.
 - (10) Each manufactured home shall be set back a minimum of twenty (20) feet from the street line of any internal street within the manufactured home development.
 - (11) No manufactured home shall be located closer than 30 feet to any property line or to any exterior street right-of-way line. A landscaped buffer shall be planted and maintained within this required setback area. A landscape plan for the buffer area shall be approved by the Planning Board. Plantings in the buffer may include evergreen trees, deciduous trees, hedges, etc. Any such plantings shall be arranged around entrances and

exits so as not to interfere with site distance and vehicular safety. Fencing may also be required in the buffer area.

- (12) All exposed ground surfaces in any manufactured home development shall be paved, surfaced with crushed stone or similar material, or protected with grass or other ground cover capable of preventing erosion and of eliminating objectionable dust and mud.
- (13) A hard-surfaced parking pad, which can accommodate two personal vehicles, shall be provided on each manufactured home space.
- (14) At least one shade tree of not less than one and one-half inches in diameter, measured one foot above ground level, shall be planted on each manufactured home space.
- (15) No outdoor storage of personal property shall be permitted, except within an accessory storage shed not exceeding one hundred sixty (160) square feet in size. All storage buildings shall be placed on a firm foundation. A maximum of one storage shed per manufactured home space shall be permitted.
- (16) All manufactured homes or mobile homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home or mobile home. If feasible, the tongue shall be removed. Skirting shall be completed within thirty (30) days of the date the manufactured home or mobile home was placed on the site.
- (17) All utility lines shall be placed underground.
- (18) An adequate and tested supply of pure water for drinking and domestic purposes shall be supplied to all manufactured home spaces within the park. The water supply system shall be approved, in writing, by the Cattaraugus County Department of Health.
- (19) A combined sewage treatment and disposal system shall be provided as recommended and approved by the Cattaraugus County Health Department.
- (20) Adequate garbage disposal facilities, as approved by the Cattaraugus County Health Department, shall be provided.

(C) Annual Inspection

- (1) An annual inspection shall be conducted by the Code Enforcement Officer to insure that all aspects of the conditions of approval of the special use permit are still in compliance. The Code Enforcement Officer shall report his/her findings to the Planning Board.
- (3) If, upon inspection, it is found that the permit holder has violated any provisions of the grant of special use permit, or any other provisions of this law, the Planning Board shall have the authority to suspend such permit and to order the manufactured home development closed, after notice has been given to the permit holder and after said permit holder has had the opportunity to appear at a public hearing to be held in accordance with the public hearing requirements in Article 11 of this law.

Section 9.10 Recreation Vehicles and Trailers

- (A) Recreation vehicles and trailers may be located and used in any residential district in the Town for a period of up to one year, subject to obtaining a permit from the Zoning Inspector. After the one-year period, the recreation vehicle or trailer must be removed from the lot and may not be re-located on the lot for a period of thirty days. If at any point during the original one year time period, the vehicle is removed from the lot for a period of 30 days, the one-year time period shall begin again. Use of a recreation vehicle or trailer as a permanent residence shall not be allowed because of concerns about sanitary facilities, which may cause a public health and safety issue.
- (B) Individual recreation vehicles owned by residents of the Town may be stored on the property of the owner for an unlimited period, provided that no residence is taken therein or business conducted therewith. Such storage must be off-street, and the vehicle may not be stored in the front yard or in front of a dwelling.

Section 9.11 Debris, Weeds, and Junk

(A) Purpose

The purpose of this section is to protect the health, safety and welfare of residents of the Town of New Albion by prohibiting certain types of excessively high vegetation and/or the presence of junk and debris, which may:

- (a) cause a fire hazard
- (b) furnish cover for prowlers
- (c) obstruct visibility at street intersections
- (d) result in the aggravation of allergies
- (e) furnish a potential harborage or breeding place for disease-carrying insects, rodents, reptiles, other animals and poisonous snakes.
- (g) impair the enjoyment of the outdoor environment from neighboring properties.

(B) Weeds and grass

- (1) **Duty of Owner.** The owners of all private property are hereby required to cut, trim or remove brush, fallen tree limbs, high grass, and weeds from their premises and to keep such premises in a reasonably clean and sanitary condition so as to prevent the breeding of insects or vermin and to prevent the spread of noxious weeds to adjoining premises. Premises situated at street intersections or on curved streets shall be kept in such condition as to give a clear and unobstructed view of the intersection or curve.
- (2) **Exception.** The provisions of Section 9.11 (B) (1) set forth above shall not be construed to prevent the raising of garden or cultivated crops or the maintenance of a natural landscaped area, or to unreasonably require the cutting of grass and brush on undeveloped areas except in the immediate vicinity of other properties.

(C) Littering

- (1) **Public Places.** No person shall throw or place any papers, trash, garbage, debris or junk in any street or street right-of-way, park, creek or creek bank, or any other public lands, except at the time and manner provided for the collection of garbage.
- (2) **Private Property.** No person, either as owner, lessee, agent, tenant or otherwise, of any lot, land, premises or improved property in the Town, shall throw, cast, deposit or allow to accumulate thereon, any decomposable organic matter which might create a nuisance or act as a breeding place for flies or bugs or as food for rats or vermin; or any trash, debris, junk or discarded material or thing which is capable of holding water, which might serve as a breeding place for mosquitoes; or any combustible matter or material which might increase the fire hazard in his or neighboring property; or any junk motor vehicle; or any trash, rubbish, junk, debris, or any discarded material or thing which may serve to harbor vermin and/or which tends to produce an unsightly and disagreeable appearance, objectionable to the neighborhood
- (3) **Exception.** The provisions of Sections 9.11 (C) (1) and (2) shall not be construed to prohibit the proper and temporary accumulation in suitable containers of garbage, ashes, refuse, etc. for regular collection; or the depositing of manure for the immediate cultivation of land; or the presence of regularly maintained compost piles.

(D) Unlicensed Vehicles

- (1) A maximum of one unlicensed vehicle may be stored on a residential lot, provided the following conditions are met:
 - (a) The vehicle is not stored in the front yard.
 - (b) The vehicle is for the personal use of the occupant of the premises on which the vehicle is stored.
 - (c) Repair of the unlicensed vehicle may be allowed provided that sustained and continuous progress in restoring or repairing the vehicle is made. If the repairs or restoration require more than 90 days to complete, the vehicle and all component parts must be stored in a wholly enclosed garage.
- (2) A maximum of five unlicensed vehicles may be stored on a lot in a commercial district, while undergoing repairs, provided the following conditions are met:
 - (a) The vehicles are not stored in the front yard.
 - (b) The facility on which the vehicles are located is a state licensed automobile repair facility.

(c) Sustained and continuous progress in restoring or repairing the vehicles is made. Upon written citation by the Zoning Inspector, a vehicle or vehicles must be made operational within five working days. If the vehicle(s) are not made operational within this time period, it shall be presumptive evidence that the vehicles are junk motor vehicles within the meaning of this law and shall be removed from the Town.

For purposes of this section, "to be made operational" shall mean that the vehicle is legally safe for use upon the road and that the vehicle passes New York State vehicle inspection.

(E) Enforcement

- (1) **Authority of the Code Enforcement Officer.** The Code Enforcement Officer of the Town of New Albion, upon complaint being made to him, or upon his own motion, shall address to any owner permitting a violation of Section 9.11 to exist upon his property a notice in writing, served personally or by mail to the address appearing on the Town tax roll, requiring such person to remove the violation within ten days from the date of the notice of violation.
- (2) **Town to Perform Work.** Upon the failure of such owner to comply with such notice within the time specified therein, the Code Enforcement Officer shall notify the Town Board and said Town Board shall direct the Superintendent of Public Works to cause such premises to be put in such condition as will comply with this section and shall charge the costs thereof to the owner of said premises.
- (3) **Payment for Services.** Bills rendered for mowing grass, cleaning sidewalks, removing trees, removing debris and junk, and similar services shall be due thirty (30) days from the date of such bills. The owner of the premises shall be held responsible and liable for all charges for such services. Failure to pay within the aforementioned designated time shall be deemed a violation of this statute and punishable therefore.

Section 9.12 Adult Use Regulations

(A) Purpose

As shown in the Town of New Albion/ Village of Cattaraugus Adult Use Study, adult uses, due to their very nature, have serious objectionable secondary characteristics and effects, particularly when located in close proximity to residential neighborhoods, schools and other sensitive land uses. It has been acknowledged by communities across the nation that state and local governments have a special concern in regulating the location of such businesses to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of youth in the community.

The primary purposes of the regulations contained in this section is to preserve the integrity and character of residential neighborhoods and important natural and cultural resources of the Town, to deter the spread of blight, and to protect minors from the objectionable secondary characteristics of adult uses.

(B) Standards

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

- (1) All adult uses shall be operated in a manner that is consistent with the New York State Penal Law relating to exposure, obscenity or lewdness.
- (2) No adult use shall be established or operated within one thousand (1,000) feet of:
 - a. a public or private elementary or secondary school, nursery school or state licensed day care facility, or use of a similar nature
 - b. a church, synagogue or other place of worship
 - c. a public park, municipal office building, community center, civic facility or cultural facility (excluding sewage treatment facilities)
 - d. an historic or scenic resource
- (3) No adult use shall be established or operated within three hundred (300) feet of the boundary of any residential or agricultural zoning district in the Town of New Albion or within three hundred (300) feet of the boundary of any residential district within the Village of Cattaraugus.
- (4) No more than one adult use shall be located in the same building or upon the same lot or parcel of land.
- (5) No adult use shall be located within two hundred (200) feet of another adult use.
- (6) No adult use shall be located in any building that is used in whole or in part for residential purposes. No residential use shall be established in any building that contains an approved adult use.

- (7) All building openings, entries, windows, and doors associated with an adult use shall be located, covered, or screened in such a manner as to prevent a view into the interior of the building from any public right-of-way or adjacent property. Such screening shall be done in an aesthetically appropriate manner.
- (8) No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas where they can be viewed from a public street or sidewalk adjacent to the establishment.
- (9) All adult uses shall be conducted in an enclosed building. Sound within the building shall not be audible to a person on a public right-of-way.
- (10) Adequate landscaping shall be provided to minimize the visual impact on adjacent sites of any structure containing an adult use.
- (11) Sign Requirements:

In addition to the sign requirements of Section 9.3, the following provisions shall apply to signs erected or maintained in connection with an adult use:

- a. No off-premises signs or freestanding signs shall be permitted.
- b. Advertisements, displays or promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or walkways or from other areas public or semipublic, and such displays shall be considered to be signs.
- c. No more than one wall sign shall be permitted for an adult use. Such sign shall be permitted only on the front facade and shall not exceed twenty-four (24) square feet in area.
- d. Sign messages shall be generic in nature and shall not contain material classified as advertising. No exterior sign associated with an adult use shall contain any photographic or artistic representation of the human body.
- e. Signs shall not be illuminated at times during which the business is closed. Light from illuminated signs shall not be permitted to shine onto residential properties or streets, roads or other travelled ways.

(12) Measurement of Distances

Distance limitations shall be measured in a straight line, without regard to intervening structures, from the nearest point on the outside wall of the building that contains the adult use to the nearest point of a district boundary line or a lot line for a parcel containing a use specified above.

Section 9.13 Telecommunications Facilities

(A) Purpose

The purpose of these supplemental regulations governing telecommunications facilities is to promote the health, safety and general welfare of the residents of the Town of New Albion; to provide standards for the safe provision of telecommunications consistent with applicable federal and state regulations; to minimize the total number of telecommunication towers in the community by encouraging shared use of existing and future facilities, and the use of existing tall buildings and other high structures; to minimize adverse visual effects from telecommunications towers by requiring careful siting, visual impact assessment, and appropriate landscaping; and to minimize the harmful impact on wildlife, especially migratory birds.

(B) Special Use Permit Required

- (1) Where permitted in Article 7 of this law, a telecommunications facility may be constructed or expanded, or an existing structure may be modified to serve as a telecommunications facility, subject to obtaining a Special Use Permit from the Planning Board. In granting a Special Use Permit the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed use.
- (2) All telecommunications facilities shall conform to the standards contained in this section and other sections of this local zoning law. These standards shall be considered minimum requirements.
- (3) No Special Use Permit for a telecommunications facility, or renewal or modification of such permit, shall be granted by the Planning Board unless it finds that such facility:
 - (a) Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities.
 - (b) Conforms with all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration, Fish and Wildlife Service, and other federal agencies.
 - (c) Is designed and constructed in a manner which minimizes visual impact to the maximum extent practical.
 - (d) Complies with all other requirements of this Local Law, unless they are expressly superseded herein.
 - (e) Is the most appropriate site among those available within the technically feasible area for the location of a Telecommunications Facility.

- (4) No building permit shall be issued until the applicant provides proof that space on the facility has been leased or will be operated by a provider licensed by the FCC to provide service in the area.
- (5) If a telecommunications facility is allowed by the Zoning Board of Appeals through the grant of a use variance, prior to the issuance of a building permit the applicant shall apply for and receive site plan review approval, following the procedure in Article 10 of this zoning law. As part of the application materials, the applicant shall submit all the information and materials listed in Section 9.13(E) or 9.13(F), whichever is applicable.

(C) Exceptions

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

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

(D) Shared Use of Existing Structures

The shared use of existing telecommunications towers or other structures, such as church steeples, silos, or water towers, shall be preferred to the construction of new towers, wherever feasible. Any application for a Special Use Permit for a new or modified telecommunications facility shall include proof that reasonable efforts have been made to co-locate with an existing telecommunications facility or an appropriate existing structure.

(1) Shared Use of Existing Telecommunications Facilities

a. An applicant shall be required to present an adequate report inventorying existing towers, and approved, but unbuilt towers, within a reasonable distance of the proposed site. This distance shall be determined by the Planning Board in consultation with the applicant. If an appropriate communications tower or towers is available, the applicant shall submit a written evaluation of the feasibility of sharing such tower(s). The evaluation shall analyze, but is not limited to, the following factors:

- i. Structural capacity of the tower or towers
- ii. Radio frequency interference
- iii. Geographic service area requirements
- iv. Mechanical or electrical incompatibilities
- v. Inability or ability to locate equipment on the tower or towers, and
- vi. Any restriction or limitations of the Federal Communications Commission that would preclude the shared use of the tower.

- b. The applicant must demonstrate that the proposed telecommunication antenna(s) cannot be accommodated on existing sites due to one or more of the following reasons:
 - i. The planned equipment would exceed the structural capacity of existing and approved antennas, considering existing and planned use for those facilities.
 - ii. The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot reasonably be prevented.
 - iii. Existing or approved telecommunication towers or other structures do not have space on which the proposed equipment can be placed so that it can function effectively and reasonably.
 - iv. Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures.
 - v. The property owner or owner of the existing telecommunication facility or other structure refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates.
- c. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of an appropriate existing telecommunications tower. Written requests and responses for shared use shall be provided.

(2) Shared Use of Existing Buildings

- a. The applicant shall prepare an inventory of those buildings and structures in the cell search area which exceed seventy-five (75%) of the height of the proposed tower, to determine if any may be suitable to accommodate the antenna(s). If suitable structures are located, the applicant shall enter into good faith negotiations with the building owner to secure rights to place one or more antennae on such structures.
- b. The applicant shall be required to submit a report demonstrating a good-faith effort to secure shared use of the existing building or structure. Written requests and responses shall be provided.
- c. The applicant must demonstrate that the proposed telecommunication antenna(s) cannot be accommodated on existing sites due to one or more of the reasons listed in Section 9.13 (D)(1)(b).

(3) Unsuitable Structures

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

(E) Application Materials for New Telecommunications Facilities

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

- (1) A report from a professional engineer, licensed to practice in the State of New York, which shall:
 - a. Describe the facility and the technical, economic and other reasons for the facility and tower design, including a cell search area analysis, demonstrating the area within which the telecommunications facility needs to be located in order to provide proper signal strength and coverage to the target area.
 - b. Describe the tower height and design, including cross sections of the structures.
 - c. Describe how many and what kinds of antennas are proposed.
 - d. Describe the capacity of the tower, including the number and type of antennas it can accommodate.
 - e. Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure
 - f. Describe the fall zone of the proposed tower
- (2) A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).
- (3) A letter of intent committing the facility owner to negotiate in good faith for shared use by third parties in the future. Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit, if one has been granted.

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

- a. Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
- b. Negotiate in good faith for shared use by third parties.
- c. Allow shared use if an applicant agrees in writing to pay reasonable charges.
- d. Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, a pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance, financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- e. Allow shared use (co-location) if the new antenna(s) and equipment do not exceed structural loading requirements, interfere with space used or planned to be used by the applicant, nor pose any technical or radio frequency interference with existing equipment.

- (4) The reports and evaluations required in Section 9.13 (D), Shared Use of Existing Structures.
- (5) A Full Environmental Assessment Form (EAF) and the Visual Addendum to the EAF. Particular attention shall be given to the visibility of the facility from key viewpoints that are identified in the Visual Addendum, existing tree lines and proposed elevations. The Planning Board may require submittal of a more detailed visual analysis based on the information and analysis contained in the EAF and Visual Addendum.
- (6) A site plan, showing all existing and proposed structures and improvements on the site, including towers, antennas, roads, buildings, guy wires and anchors, parking and landscaping. The height and type of tower shall be indicated. Materials and colors of the tower and other buildings shall be shown. The site plan shall include grading plans for new facilities and roads. Landscaping and other proposed screening methods shall be detailed. Information on proposed lighting of the tower and the site shall be included.

Site Plans for all Telecommunications Facilities must bear the seal of a professional engineer licensed to practice in the State of New York.

- (7) Proof of Liability Insurance, in an amount acceptable to the Planning Board.
- (8) All required fees.
- (9) Any other material that the Planning Board deems necessary to evaluate the application.

Any permit granted under this section shall be valid only for the number and type of antennas in the approval. Any increase in number or change in type of antennas on any existing tower shall be subject to a new application and additional approval by the Planning Board.

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

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

- (1) A completed application for a Special Use Permit.
- (2) Documentation of intent from the owner of the existing facility to allow the shared use, when feasible.
- (3) A report from a professional engineer licensed to practice in the State of New York certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure or existing telecommunications tower, and explaining what modifications, if any, will be required in order to certify to the above. The report

shall indicate the proposed method of affixing the antenna(s) to the structure. Complete details of all fixtures and couplings, and the point of attachment shall be indicated.

- (4) A completed short Environmental Assessment Form (EAF) and a completed Visual Addendum to the EAF. The Planning Board may require a more detailed visual analysis, based on the results of the Visual Addendum.
- (5) A copy of the applicant's Federal Communications Commission (FCC) license, including any requirements from the Federal Aviation Administration (FAA).
- (6) A site plan showing the information described in Section 9.13 (E) (6).
- (7) Proof of Liability Insurance, in an amount acceptable to the Planning Board.
- (8) All required fees. However, in order to encourage the co-location of antennas on existing telecommunications towers, the fee for such co-location shall be waived.
- (9) Any other information deemed necessary by the Planning Board.

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

(G) Visual Impact Assessment

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

- (1) A map showing locations from which the facility may be seen.
- (2) Pictorial representation of "before and after" views from key viewpoints both inside and outside of the town, including but not limited to: state highways and other major roads, state and local parks, other public lands, preserves and historic sites normally open to the public; and from any other location where the site is visible to a large number of residents, visitors or travelers. The Planning Board shall determine the appropriate sites in consultation with the applicant.
- (3) Assessment of alternative tower designs and color schemes.
- (4) Assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

(H) Design Requirements**(1) General Requirements**

- a. All towers and accessory structures shall be sited to have the least practical adverse effect on the environment. All telecommunications facilities shall be a neutral color and shall be designed to blend into the surrounding landscape and be compatible with adjacent land uses.
- b. Placement of the antenna(s) on a suitable existing structure, such as a church steeple, water tower, or silo is encouraged, whenever feasible.
- c. A telecommunications tower shall not be located within 500 feet, or the height of the tower plus 50 feet, whichever is greater, of a public building or highway right-of-way line.
- d. Towers shall be finished or painted in colors that minimize their visibility, unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements.
- e. Towers shall not be artificially lighted, except as required by the Federal Aviation Administration (FAA). However, the Planning Board may require lighting of a tower for public safety considerations.
- f. No portion of any tower may be used for signs or advertising purposes, including the company name, banners, streamers, etc. However, each telecommunications facility shall post a sign that lists the names and addresses of all companies that use the facility. Such sign shall be designed to be read from the ground and shall not exceed 24 square feet in area.
- g. The applicant shall demonstrate that the proposed height for the tower and antenna(s) is the minimum necessary to function satisfactorily. No tower or antenna(s) that is taller than this minimum height shall be approved. Notwithstanding the foregoing, the maximum height for a telecommunications tower shall be 150 feet.
- h. An accessory structure or building, if any, shall be designed using materials, colors and textures that are compatible with their natural surroundings or with the structures in the neighborhood in which they are located.
- i. Each telecommunications facility will have "No Trespassing" signs posted conspicuously on the site.
- j. There shall be no permanent climbing pegs within thirty feet of the ground on any tower.

- k. All telecommunications towers shall be appropriately grounded.

(2) Screening and Landscaping

- a. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees exceeding six (6) inches in diameter, measured at a height of four and one-half feet above the ground (breast height), shall take place prior to approval of the Special Use Permit.
- b. The Planning Board may require fencing around the telecommunications facility.
- c. Landscaping may be required to screen the fencing. Whenever feasible, the landscaping shall be planted on the outside of the fencing. The landscaping may be installed on the inside of the fencing, subject to the approval of the Planning Board, if the survivability or utility of landscaping on the exterior of the fencing is questionable.
- d. The Planning Board may require evergreen hedges or other planting strips as necessary to screen portions of the facility. Installation of new plantings will not be required in those places where the presence of existing vegetation or structures is sufficient to screen the tower and accessory buildings, or in cases where the proposed landscaping would not be visible

(3) Protection of Birds

Numerous studies have pointed to the hazards that towers can pose to birds, especially to migratory birds. The U.S. Fish and Wildlife Service has developed a set of interim guidelines for construction of communications towers that are intended to mitigate the hazard such towers pose to birds, based on current scientific research. To the maximum extent possible, consistent with the Telecommunications Act of 1996, and any subsequent amendments, and FAA regulations, communications towers within the Town of New Albion shall conform to the Fish and Wildlife Service "Interim Guidelines for Recommendations on Communications Tower Siting, Construction, Operation and Decommissioning" dated September 14, 2000 and any future additions, amendments or replacement guidelines that may be issued by the Fish and Wildlife Service. These guidelines are on file with the Town Clerk. Among the recommendations, which should be followed to the maximum extent possible, are the following:

- a. Towers shall be no more than 199 feet above ground level.
- b. Towers should use construction techniques that do not require guy wires (i.e. use lattice structure, monopole, etc.)
- c. Security lighting for on-ground facilities and equipment, if required, should be down-shielded to keep light within the boundaries of the site.

(I) Setbacks

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

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

(J) Access

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

(K) Parking

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

(L) Site Remediation

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

(M) Engineering and Maintenance

- (1) Every telecommunications facility shall be built, operated and maintained to acceptable industry standards, including but not limited to the most recent, applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).
- (2) Every facility shall be inspected, at the owner's expense, at least every two years for structural integrity by an engineer, specializing in structural engineering, who is licensed to practice in the State of New York. A copy of the inspection report shall be promptly submitted to the Code Enforcement Officer.
- (3) The structural inspection report shall describe the structural integrity of the facility, maintenance issues and repairs needed or made, if any. In the event that the structural

inspections indicates structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Code Enforcement Officer. Failure to make the repairs may result in revocation of the Special Use Permit.

(N) Removal of Obsolete Facilities

- (1) All obsolete and unused telecommunication towers shall be removed within twelve (12) months of cessation of use.
- (2) The owner of the telecommunication facility shall annually file a declaration with the Planning Board as to the continuing operation of every facility installed subject to this Local Law.
- (3) At the time of submission of the application for a telecommunication facility the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower used as a telecommunication facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve consecutive months. Upon removal, the land shall be restored to its previous condition, including but not limited to the stabilization and re-vegetation of exposed soils.
- (4) The Planning Board may require, as a condition of approval of the Special Use Permit, that the applicant post a bond with the Town, sufficient to allow the Town to have the unused tower removed, if the owner fails to do so within the prescribed time period. The amount of the bond shall contain sufficient funds to include the cost of regrading and landscaping the site, or other site rehabilitation measures.

(O) Expiration of Special Use Permit

The grant of Special Use permit shall expire upon:

- (1) The failure to commence active operation of the telecommunications facility within twelve (12) months of the approval of the Special Use permit. This time limit may be extended by the Planning Board, upon written application of the applicant. Such application shall state the cause of delay in commencing operation.
- (2) The discontinuance of the active and continuous operation of the telecommunications facility for a continuous period of six (6) months, regardless of any reservation of an intent not to abandon or discontinue the use or of an intent to resume active operations.

(P) Reimbursement of Fees and Expenses

The Town of New Albion, at the expense of the applicant, may employ its own consultant to review the findings and conclusions of safety analysis, visual analysis, structural inspection or any other applicable technical material provided by the applicant. The issuance of the special

use permit or building permit shall be conditioned upon reimbursement by the applicant to the Town for all reasonable legal, engineering or technical consulting fees incurred by the Town in the review of the application.

Section 9.14 Accessory Apartments

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

- (A) There shall be no more than one (1) accessory apartment per lot.
- (B) The applicant shall demonstrate that the existing sewage disposal system and water supply are adequate to serve the accessory apartment.
- (C) The applicant shall show that there is adequate off-street parking for the occupants of the accessory apartment, in addition to the parking required for the primary residence.
- (D) If an accessory apartment is located in the principal dwelling unit, the entry to such unit and its design shall be such that, to the maximum degree feasible, the appearance of the building will remain that of a single family dwelling.
- (E) The minimum gross floor area for an accessory apartment shall be three hundred (300) square feet. There is no maximum size limit, but the apartment should be accessory to the main dwelling unit, as determined by the Planning Board
- (F) Mobile homes and/or manufactured homes shall not be allowed as accessory apartments.

Section 9.15 Stormwater Management and Erosion Control

(A) Purpose

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

(B) Applicability

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

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

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

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

Section 9.16 Home-based Businesses

A home-based business may be permitted, by right, as an accessory use in any dwelling unit, provided that the business conforms to the following criteria:

- (A) The home-based business is clearly incidental to the use of the building as a dwelling unit, does not change the character of the dwelling unit, and does not have any exterior evidence of such use.
- (B) The home-based business does not occupy more than 25% of the gross residential floor area of the dwelling unit, or the equivalent in an accessory building or buildings.
- (C) The home-based business does not employ more than one paid worker.
- (D) Sales are limited to goods produced on the premises.
- (E) **Signs:** A home-based business may display one sign, either on the wall of the dwelling or a freestanding sign. The sign may not exceed six square feet in area. Freestanding signs shall not be more than four (4) feet high, measured from the ground to the top of the sign.
- (F) **Parking:** To the maximum extent feasible, parking for customers of the home-based business shall be accommodated on-site, in an existing driveway, for example. However, paving of the front yard to accommodate parking shall not be allowed.

(G) The following shall not be allowed as home-based businesses:

- (1) Mortuary establishments
- (2) Automobile body shops
- (3) Automobile repair shops
- (4) Retail businesses
- (5) Manufacturing
- (6) Restaurants and eating establishments

Section 9.17 Arts and Crafts Studios

An Art and Craft Studio is permitted, by right, as an accessory use in any dwelling unit, provided that the business conforms to the following criteria:

- (A) The arts and craft studio shall be an accessory use to the dwelling unit in which it is located. It shall be clearly incidental to the use of the building as a dwelling and shall not change the character thereof or have any exterior evidence of such use other than one sign.
- (B) An arts and craft studio shall not occupy more than 25% of the gross residential floor area of the dwelling unit, or such equivalent size in an accessory building or buildings.
- (C) Sales of the work of the artists/craftpersons who reside in the dwelling unit shall be permitted.
- (D) **Signs:** An arts and craft studio may display one sign, either on the wall of the dwelling or a freestanding sign. The sign may not exceed six square feet in area. Freestanding signs shall not be more than four (4) feet high, measured from the ground to the top of the sign.
- (E) **Parking:** To the maximum extent feasible, parking for customers of the arts and craft studio shall be accommodated on-site, in an existing driveway, for example. However, paving of the front yard to accommodate parking shall not be allowed.

Section 9.18 Yard Sales

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

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

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

Section 9.19 Hillside Development Standards

(A) Purpose

These regulations are intended to further implement and define the goals and objectives of the Comprehensive Plan, to minimize the adverse effects of excessive grading, and to promote the health, safety and welfare of residents of the Town of New Albion, while allowing for the reasonable development of land, as expressed through the following purposes:

- (1) promote the safety of the design of developments
- (2) minimize soil instability, erosion and downstream siltation
- (3) provide for safe vehicular and pedestrian circulation
- (4) preserve the scenic and rural character of the Town of New Albion
- (5) limit the extent of grading and encourage sensitive development in the hillside areas through flexible design

(B) Applicability

These regulations shall apply to all areas of steep slopes. Areas of steep slopes are areas where the land has an average slope of more than fifteen percent (15%). The average slope shall be determined using the following formula:

$$\text{Average slope} = \frac{.0023 \times I \times L}{A}$$

Where:

.0023 = is a factor for the conversion of square feet into acres

I = contour interval, in feet, shown on the topographical map of a parcel. The contour interval shall not exceed 10 feet.

L = combined length, in feet, of all contour lines

shown on the topographical map

A = area of the parcel in acres

Any development, other than single family homes and agricultural activities that do not include the construction of a structure, that is proposed for a site where the average slope exceeds 15% shall require site plan review in accordance with the provisions of Article 10 of this local law.

(C) Slope-Density Requirements

Areas of steep slopes (areas where the average slope exceeds 15%) pose special problems for development. Excessive grading can promote slope instability, cause erosion and downstream sedimentation, pose a safety hazard, and affect the visual character of the hillsides. For these

reasons, the minimum lot size requirements contained in Article 7 are modified for areas of steep slopes, according to the following table:

<u>Percent of Slope</u>	<u>Density (Minimum Lot Size)</u>
0-15%	See Table of Dimensional Regulations
16-25%	2 acres
26-35%	4 acres
36% or greater	5 acres

(D) Development Standards

(1) Grading

- a. It shall be the policy of the Town to encourage minimal grading. Grading should relate to the natural contour of the land. Graded areas shall be rounded off in a natural manner, so that there are no sharp angles at the top and toe of areas of cut and fill.
- b. Tops and toes of cut and fill slopes shall be set back from property boundaries a distance of three feet.
- c. If the proposed finished grade is greater than the angle of repose of the natural grade, then the applicant shall submit an engineering report that evaluates the stability of the soil and proves that the soils on site can support the proposed grade.

(2) Vegetation and Replanting

- a. Existing trees and other vegetation will be retained to the maximum extent feasible.
- b. All graded and other disturbed areas shall be stabilized and covered as soon as possible. Areas to be landscaped shall be reseeded or replanted as soon as practical, but within one growing season at the latest. Other disturbed soil surfaces shall be stabilized and covered by other means acceptable to the Planning Board, such as walls or graveled access ways

(3) Drainage

Natural drainage channels shall be preserved and used to the maximum extent feasible.

Section 9.20 Townhouse Development

Where permitted in Article 7, townhouses shall be developed in accordance with the following regulations. An applicant for townhouse development shall apply to the Planning Board for approval under the site plan review procedures of this zoning law. All required application documents and fees that are required under Article 10 of this law shall be submitted for review.

If the townhouses are to be sold individually, application must also be made for subdivision approval.

(A) Minimum Lot Area and Yard Requirements

- (1) Townhouse developments shall contain a minimum of 2 acres, unless the slope-density provisions of Section 9.19 of this zoning law require a higher minimum.
- (2) No more than five (5) townhouses per gross acre shall be permitted. However, townhouses may be clustered in one area of a site that exceeds this density, as long as the average density of the overall development does not exceed five townhouses per acre.
- (3) In order to promote good design, there are no minimum yard requirements for each individual townhouse unit. The Planning Board will review and establish setbacks for each application. However, the project as a whole must conform to the setbacks in the zoning district in which it is located.
- (4) There is no minimum lot width for each townhouse.
- (5) If townhouses are located on a separate platted lot, the minimum lot area for end lots shall be four thousand (4,000) square feet and the minimum lot area for interior lots shall be three thousand (3,000) square feet.

(B) Access and Parking

- (1) No townhouse shall be constructed so as to provide direct vehicular ingress or egress to individual units from existing Town streets. All townhouses shall take access from a new approved interior street that shall be either a public street or a private street that meets the Town's requirements for a public street.
- (2) The Planning Board shall review the proposed street widths within a townhouse development. The amount of paved area to be required may vary depending upon the proposed level of use and the topography of the site. One way streets may be approved to reduce the amount of grading required, as long as emergency vehicle access is not compromised.
- (3) Sidewalks shall connect each townhouse to the parking area serving that townhouse and to other buildings within the site.
- (4) Shared driveways are permitted, with the recording of perpetual easements for the shared use.
- (5) Two parking spaces per unit shall be provided.

(D) Building Design

- (1) The townhouse development shall exhibit consistency in architectural design and materials among all the buildings, structures, and walls on the project site.
- (2) No more than nine (9) townhouses may be attached in any one series. There shall be a separation equal to one-half the average height of the end units between two adjacent rows of townhouses.
- (3) Buildings shall be designed to prevent the appearance of straight, unbroken lines in their horizontal and vertical surface. There shall be no more than two continuous townhouse units without a break in either the horizontal or vertical elevations of at least three feet.
- (4) Maximum height for townhouses shall be that of the zoning district in which the parcel is located.
- (5) Coverage: No more than 50 percent of the parcel shall be occupied by buildings. A minimum of 30 percent of the lot shall be devoted to open space.

(E) Landscaping

- (1) A landscaping plan shall be provided as part of each application. Landscaping shall be required around all buildings and parking areas.
- (2) Buffering may be required to screen higher density development from view of major roadways in the town.
- (3) The preservation of existing major trees is encouraged.
- (4) Part of the lot may be left as existing natural vegetation. This area shall be shown on the site plan.

(F) Utilities

- (1) The applicant shall demonstrate that adequate water supply and sanitary sewer facilities are available to serve the proposed development. These facilities must be approved by the Cattaraugus County Health Department, in writing, prior to final approval of the project.
- (2) The applicant shall demonstrate that the proposed storm water drainage facilities are adequate. An erosion control and stormwater management plan may be required.
- (3) All utility lines shall be placed underground.

(F) Common Open Space

Prior to approval of the application for a townhouse development, the applicant shall submit plans that show the proposed ownership and maintenance of any common open space. Ownership could be by a homeowner's association, by a non-profit organization, or by the Town of New Albion.

- (1) If the open space is offered to the Town, the Town Board shall decide whether or not to accept the open space dedication. In making its determination, the Town Board shall consider the intended use of the land, the size and location of the land, the availability of the open space to the public, and the cost of development and/or maintenance of such open space.
- (2) If the open space is not dedicated to the Town, it shall be protected by legal arrangements, satisfactory to the Town Attorney, sufficient to assure its maintenance and preservation for whatever purpose is intended.
 - a. Covenants or other legal arrangements shall specify ownership of the open space, the method of maintenance, responsibility for maintenance, maintenance taxes and insurance, compulsory membership and compulsory assessment provisions, guarantees that any association formed to own and maintain open space will not be dissolved without the consent of the Town Board, and any other specifications deemed necessary by the Town Attorney.
 - b. In addition, the Town of New Albion shall be legally empowered to enforce the covenants in the event of failure of compliance. If the Town is required to perform any maintenance work, the Town shall be empowered to place a lien upon the properties in the development until said cost has been repaid to the Town.
 - c. The covenant shall further require that the developer shall be a member of any association formed to own and maintain the open space; the developer's membership shall continue until all of the lots of record have been sold.

Section 9.21 Control of Excavation

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

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

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

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

ARTICLE 10 SITE PLAN REVIEW

Section 10.1 Purpose

The purpose of this article is to ensure that any new development, substantial redevelopment, or change in use in the Town of New Albion is in harmony with the character of the town. Another purpose is to minimize conflicts between future development and neighboring existing uses and natural features of the site; this will minimize any potential adverse effects to the health, safety, and general welfare of the residents of the Town of New Albion.

Section 10.2 Authorization to Review Site Plans

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

Section 10.3 Applicability and Exceptions

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

- (A) All agricultural activities, including construction of buildings and structures that are normally accessory to agricultural activities.

- (B) The sale of agricultural produce and temporary structures related to the sale of agricultural produce.
- (C) Construction of new one-family or two-family dwellings, including ordinary accessory structures and related land use activities. Additions, of any size, to existing one-family and two-family dwellings are also exempt from site plan review.
- (D) Signs, except for signs that are included in projects that would otherwise require site plan review.
- (E) Ordinary repair or maintenance to existing structures or uses.
- (F) Interior structural alterations within any existing building.
- (G) Exterior alterations or additions to existing structures that would not increase the square footage of the existing structure by more than twenty-five (25) percent or additions of less than 5,000 square feet, whichever is the lesser.
- (H) Landscaping or grading, unless the landscaping and/or grading is part of a development or building project that is subject to site plan review.
- (I) Logging and timber cutting.
- (J) Home based businesses and arts and crafts studios.
- (K) Accessory structures, including fences, unless the fence or other accessory structure is part of a project that is subject to site plan review.

Section 10.4 Application Procedure

- (A) An applicant for Site Plan approval shall submit a completed application to the Zoning Inspector, who shall forward it to the Planning Board.
- (B) The application shall contain the following information and materials:
 - (1) An application for a Zoning Permit
 - (2) An area map showing:
 - a. The applicant's entire holdings
 - b. All adjacent properties
 - c. Adjacent streets, roadways and sidewalks
 - (3) A plot plan, drawn to scale and having a north arrow and date, that shows:
 - a. The location, dimensions, and use of all proposed buildings
 - b. Means of access and egress
 - c. All parking facilities and loading areas
 - d. Location, design, and size of all signs

- e. Physical features intended to protect adjacent land uses, including screening, fencing and landscaping
 - f. Existing natural features, such as wetlands, water bodies, watercourses, floodplain areas, and wooded areas.
 - g. Internal streets and sidewalks
- (4) Floor plans and elevations showing all architectural features, including materials to be used.
 - (5) A description of the sewage disposal and water supply systems to be used. Their location shall be shown on the plot plan.
 - (6) Grading plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater, and proposed erosion control measures.
 - (7) If the proposed project is in or near a floodplain, the applicant shall show that the project would not increase the base flood elevation. This proof shall be prepared by a registered professional engineer.
 - (8) Landscaping plan and planting schedule.
 - (9) Location and design of outdoor lighting facilities.
 - (10) Description of the nature and intensity of the proposed operation and its compatibility with surrounding development.
 - (11) Any additional information the Planning Board deems is necessary for an adequate assessment of a particular application.
 - (12) All required fees

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

Section 10.5 Pre-Application Conference

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

Section 10.6 Action on the Site Plan

(A) Public Hearing

- (1) The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date that the complete application is received by the Zoning Inspector.
- (2) Notice of the public hearing shall be published in the following ways:
 - a. By publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing.

- b. By mailing a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of all property lines of the property that is the subject of the application. Notice shall also be mailed to such other property owners as the chairperson of the Planning Board may direct. Such notices shall be mailed at least ten (10) days prior to the public hearing.
- c. By mailing a notice to the applicant at least ten (10) days prior to the hearing.
- d. For all applications that meet the requirements contained in Article 16 of this Law (and in Section 239m of NYS General Municipal law), the Planning Board shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing and shall be accompanied by a full statement of the application.

(B) Decision

The Planning Board shall decide on the application within sixty-two (62) days after the date of the public hearing. The concurring vote of a majority of the total membership of the Planning Board is needed to approve an application. The time within which the Board must reach its decision may be extended by mutual consent of the applicant and the Board.

(C) Filing of Decision

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

Section 10.7 Criteria for Approving Site Plans

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

- (A) Compatibility of the proposed project with the *1997 Comprehensive Plan: A Look Ahead*, and any amendments thereto.
- (B) Compatibility of the proposed project with the general purposes and intent of this zoning law.
- (C) Compatibility of the proposed development with the natural features of the site.

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

Section 10.8 Expiration of Site Plan Approval

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

Section 10.9 Revocation of Site Plan Approval

The Planning Board shall have the authority to revoke the site plan approval, after a public hearing, if the owner/applicant fails to comply with any condition(s) of approval of the application. Prior to a public hearing on this issue, the zoning inspector shall pursue abatement of the failure to comply as a violation in accordance with Article 14 of this local law.

Section 10.10 State Environmental Quality Review Act

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

ARTICLE 11 SPECIAL USE PERMITS

Section 11.1 Purpose

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

Section 11.2 Authorization to Grant Special Use Permits

- (A) The Planning Board shall hear and determine all applications for Special Use Permits for uses that are so listed in Article 7 and elsewhere in this law. After evaluating the application using the criteria established in Section 11.5 and considering the intent and purpose of this law, the Planning Board may approve or deny the application for Special Use Permit.
- (B) If the application is approved, the Planning Board may impose any reasonable conditions that it feels are necessary to mitigate potential impacts to the neighborhood, to the Town as a whole, or to the environment. These conditions may include, but are not limited to, the following:
 - (1) Limiting the hours of operation
 - (2) Requiring fencing, screening, and landscaping to protect adjacent or nearby property
 - (3) Limiting the number, size and location of signs

- (4) Controlling the number and location of driveway entrances
- (C) The Planning Board may issue a temporary Special Use permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board, provided that any such renewal or extension shall be subject to the same procedure as specified herein for the original issuance of the special use permit involved.
- (D) If conditions are imposed by the Planning Board, those conditions shall be satisfied before the Zoning Inspector can issue a Zoning Permit or a Certificate of Compliance. The Planning Board shall determine when the condition must be met.
- (E) If a variance is also required under the provisions of this law for an application, a separate application for said variance must be made to the Zoning Board of Appeals. The Zoning Board shall act on the application for a variance prior to final Planning Board action on the application for the Special Use permit.

(F)

Section 11.3 Application Procedure

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

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

Section 11.4 Action on the Special Use Permit Application

(A) Public Hearing

- (1) The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date the complete application is received by the Zoning Inspector.
- (2) Notice of the public hearing shall be published in the following ways:

- a. By publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing.
- b. By mailing a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of all property lines of the property that is the subject of the application. Notice shall also be mailed to such other property owners as the chairperson of the Planning Board may direct. Such notices shall be mailed at least ten (10) days prior to the public hearing.
- c. By mailing a notice to the applicant at least ten (10) days prior to the hearing.
- d. For all applications that meet the requirements contained in Article 16 of this Law (and in Section 239m of NYS General Municipal law), the Planning Board shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing and shall be accompanied by a full statement of the application.

(B) Decision

- (1) The Planning Board shall decide on the application within sixty-two (62) days after the date of the public hearing. The time within which the Planning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.
- (2) The concurring vote of a majority of the total membership of the Planning Board shall be necessary to grant a special use permit.

(C) Filing of Decision

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

Section 11.5 Criteria for Granting Special Use Permits

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

- (A) The proposed project is compatible with the *1997 Comprehensive Plan: A Look Ahead*, and any amendments thereto.
- (B) The proposed project is in harmony with the general purposes and intent of this law.
- (C) The nature and intensity of the proposed use is in harmony with the character of the surrounding neighborhood(s).

(D) The proposed use is of such character, size and location that in general it will be in harmony with the orderly development of the district in which the property is situated, and will not be detrimental to the orderly development of adjacent areas.

(E) The proposed use will not alter the essential character of the neighborhood nor be detrimental to the residents thereof. A permit for a special use in a residential area shall only be granted when it is clearly obvious that the special use will not impair the use, enjoyment and value of adjacent residential properties, and that any vehicular traffic generated will not be hazardous or otherwise detrimental to the prevailing residential character of the neighborhood.

(F) A Special Use permit for a use in a commercial or industrial district shall only be granted when it is clearly obvious that such use will be harmonious with the area in which its location is sought and will not create undue pedestrian or vehicular traffic hazards or any display of signs, noise, fumes, smoke, dust or lights that will hinder the normal development of the area or impair the use, enjoyment and value of adjacent land and buildings.

(G) If located near any parcel being used for an agricultural activity, the proposed use will not unduly adversely affect the pre-existing agricultural use.

(H) The proposed project will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town.

(I) Essential public facilities, such as streets, police and fire protection, water and sewerage disposal systems, exist to adequately serve the proposed project or will be provided on-site by the applicant.

(J) There is adequate on-site parking provided, and the proposed project will not unduly increase traffic in the neighborhood of the site.

(K) The proposed project is adequately screened from adjacent properties.

(L) The proposed project is compatible in design and materials with the prevailing architectural standards in the general neighborhood.

(M) The proposed project will not generate excessive noise, odor, dust, smoke or vibrations.

(N) The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic feature of major significance.

(O) The proposed project conforms to all applicable requirements contained in Article 9, Supplementary Regulations, of this law.

Section 11.6 Expiration Of Special Use Permit

A Special Use Permit shall expire if construction or other use of the property in accordance with the grant of Special Use Permit has not been commenced within one year of the date of approval. Extension may be granted by the Planning Board, upon written application prior to the expiration of the Special Use approval.

A Special Use Permit shall expire if the use of the property in accordance with the grant of a Special Use Permit shall cease continuously for one (1) year.

Nothing in this section shall be construed to prohibit the Planning Board from requiring, as a condition of approval, that a grant of special use permit be renewed periodically.

Section 11.7 Revocation of Approval of Special Use Permit

The Planning Board shall have the authority to revoke the grant of a special use permit, after a public hearing, if the owner/applicant fails to comply with any condition(s) of approval of the application. Prior to a public hearing on this issue, the zoning inspector shall pursue abatement of the failure to comply as a violation in accordance with Article 14 of this local law.

Section 11.8 State Environmental Quality Review Act

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

ARTICLE 12 ZONING BOARD OF APPEALS

Section 12.1 Organization

(A) Appointment

- (1) The Town Board of the Town of New Albion, pursuant to the provisions of Town Law applicable thereto, shall appoint a Zoning Board of Appeals consisting of five members. The terms of office shall be five years, excepting that the five members first appointed shall serve for terms of one, two, three, four and five years. Members of the Town Board are not eligible for membership on the Zoning Board of Appeals.
- (2) The Town Board shall designate the chairperson of the Zoning Board of Appeals. In the absence of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson.

(B) Vacancies

If a vacancy shall occur otherwise than by expiration of term, the new member shall be appointed for the unexpired term.

(C) Training and Attendance Requirements

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

(D) Removal from Office

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

(E) Expenses

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

Section 12.2 Powers and Duties

(A) Powers

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

- (1) Hear and determine appeals from and review any order, requirement, decision or determination made by the Zoning Inspector charged with the enforcement of this local law.
- (2) Hear and decide all matters referred to it, or upon which it is required to pass under this local law.
- (3) Hold public hearings and approve or disapprove each application for a use or area variance, as defined in this local law.
- (4) Revoke any decision to grant a variance after a public hearing, if the owner/applicant fails to comply with any conditions of approval of the original application. Prior to a public hearing on this issue, the zoning inspector shall pursue abatement of the failure to comply as a violation in accordance with Article 14 of this local law.

(B) Duties of the Chairperson

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

(C) Meetings Open To The Public

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

(D) Minutes And Records

The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of its examinations and other official actions. The minutes shall include the reasons for all decisions, and any conditions of approval.

(E) Assistance to Board of Appeals

The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board.

Section 12.3 Variances

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

(A) Use Variances

- (1) In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:
 - a. The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence; and
 - b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and
 - c. That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
 - d. That the alleged hardship has not been self-created.
- (2) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(B) Area Variances

- (1) In making its determination on an application for an area variance, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance were granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

- a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.
 - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
 - c. Whether the requested area variance is substantial.
 - d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
 - e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.
- (2) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(C) Imposition of Conditions

The Zoning Board of Appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this zoning law and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

(D) Expiration of Grant of Variance

A variance shall expire if construction or other use of the property in accordance with the grant of variance has not been commenced within one year of the date of approval. Extension may be granted by the Zoning Board of Appeals, upon written application prior to the expiration of the variance approval.

A variance shall expire if the use of the property in accordance with the grant of variance shall cease continuously for one (1) year.

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

Section 12.4 Procedures

(A) Filing of Appeals

- (1) Any party aggrieved by a decision of the Zoning Inspector shall have sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Zoning Inspector to file an appeal with the Zoning Board of Appeals and with the Zoning Inspector.
- (2) Such notice of appeal shall be in writing, on forms prescribed by the Zoning Inspector and shall specify the grounds for the appeal and the relief sought. Every appeal shall refer to the specific provision of the local law that is involved and shall exactly set forth the interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be. The appeal shall also contain the following information:
 - a. The name and address of the appellant /applicant.
 - b. The name and address of the owner of the lot to be affected by such proposed change or appeal.
 - c. A brief description and the location of the lot to be affected by such proposed change or appeal.
 - d. A statement of the present zoning classification of the lot in question, the improvements thereon, and the present use.
 - e. A reasonably accurate description of the present improvements, and the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof. In addition, there shall be attached a plot plan of the real property to be affected, indicating the location and size of the lot and size of the improvements thereon and proposed to be erected thereon.
 - f. All required fees.
- (3) The Zoning Inspector shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record of the appealed action, or in lieu thereof, certified copies of said papers.
- (4) The Zoning Inspector may recommend to the Zoning Board of Appeals a modification or reversal of his action in cases where he believes substantial justice requires the same but where he himself did not have sufficient authority to grant the relief sought.

(B) Public Hearing

- (1) Before acting on any matter appealed to it, the Zoning Board of Appeals shall hold a public hearing. The public hearing shall be held within 62 days of the date that the completed application and notice of appeal is filed with the Zoning Inspector.
- (2) Notice of the public hearing shall be published in the following ways:
 - a. By publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing.
 - b. By mailing a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of the nearest line of the property that is the subject of the appeal. Notice shall also be mailed to such other property owners as the chairperson of the Zoning Board of Appeals may direct. Such notices shall be mailed at least ten (10) days prior to the public hearing.
 - c. By mailing a notice to the applicant at least ten (10) days prior to the hearing.
 - d. For all appeals that meet the requirements contained in Article 16 of this Law (and in Section 239m of NYS General Municipal law), the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing.
- (3) At the public hearing any person may appear in person, or by agent or by attorney.

(C) Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Inspector certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed, that by reason of facts stated in the certificate, they would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Zoning Board of Appeals or by the Supreme Court on application, on notice to the Zoning Inspector and on due cause shown.

(D) Decision

- (1) The concurring vote of a majority of the total membership of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of the Zoning Inspector or to grant a use variance or area variance.

- (2) The Zoning Board of Appeals shall decide upon the appeal within sixty-two (62) days of the public hearing at which the matter was considered. The time within which the board must render its decision may be extended by mutual consent of the applicant and the board.

(E) Filing Of Decisions And Notice To The Applicant

- (1) Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.
- (2) A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant within five (5) business days of the decision.

(F) Rehearing

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

A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. A quorum of the membership of the Board of Appeals must be present when such vote is taken. Such rehearing is subject to the same notice provisions as the original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

Section 12.5 Compliance with State Environmental Quality Review Act

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

ARTICLE 13

PLANNED UNIT DEVELOPMENT

Section 13.1 Purpose

Planned Unit Developments (PUDs) are allowed in the Town of New Albion in order to encourage the establishment of common open space, to achieve economy in the provision and maintenance of public facilities, to encourage flexibility and innovation in design, to preserve natural drainage systems, and to preserve the natural and scenic features in the Town.

Section 13.2 Authorization

- (A) The Town Board of the Town of New Albion is hereby authorized to approve, approve with conditions, or disapprove the establishment and simultaneous mapping of one or more Planned Unit Development Districts. If a Planned Unit Development District is approved by the Town Board, it shall be a new zoning district and shall be designated as a Planned Unit Development District on the Town's zoning map. As part of the approval of a Planned Unit Development District, the Town Board shall review and approve a preliminary Planned Unit Development Plan.
- (B) The Planning Board is hereby authorized to review and act on final Planned Unit Development Plans in accordance with the regulations set forth herein. When approving a final Planned Unit Development Plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed development. Any final Planned Unit Development Plan that is approved by the Planning Board shall be substantially consistent with the preliminary Planned Unit Development Plan that has been approved by the Town Board.

Section 13.3 Applicability

- (A) A Planned Unit Development shall be located in the Agricultural-Forestry District or Agricultural-Residential District.
- (B) All Planned Unit Developments shall contain a minimum of five (5) acres.
- (C) The maximum number of dwelling units permitted in a Planned Unit Development shall be determined by dividing the total land area of the site by the minimum lot size required for the applicable zoning district. A fraction of a unit greater than one-half shall be rounded up to the nearest whole number. A fraction of a unit of one-half or less shall be rounded down to the nearest whole number.
- (D) Permitted Uses

Planned Unit Developments encourage a mix of land uses and/or a mix of housing types. Multiple family housing, including apartments, townhouses, and zero lot line development may be allowed. Any use permitted in the zoning district in which the parcel is located may be allowed. Other uses that are not specifically permitted in Article 7 may be permitted by the Town Board, provided that they are consistent with the intent and purpose of this law; provided that they are consistent with the Town's *1997 Comprehensive Plan: A Look Ahead*; provided that they will not have an injurious or negative impact on adjacent properties; and provided that they meet the criteria in Section 13.8 of this local law.

Where an application for a Special Use Permit would otherwise be required for a use that is proposed to be part of a Planned Unit Development (for example, a golf course), the Town Board shall consider

that use as part of the entire application for a Planned Unit Development. A separate Special Use Permit application shall not be required.

(E) Yard and Area Requirements

- (1) The PUD may contain minimum front, side and rear setbacks that may be less than those otherwise required for the zoning district in which the site is located.
- (2) The PUD may contain lots that have minimum areas and minimum widths that are less than those that would otherwise be required for the zoning district in which the site is located.

(F) Required Open Space

- (1) Land area saved by the reduction in the minimum lot size must be placed in dedicated open space. The area of dedicated open space must be equivalent to, or more than, the total reduction in lot sizes.
- (2) The required open space may be used for active or passive recreation or to preserve significant scenic or natural features of the site.
- (3) The required open space may be publicly or privately owned.

Section 13.4 Pre-Application Conference

Prior to submitting a formal application, the applicant may meet with the Town Board and the Planning Board to informally discuss the proposed project. At this time the applicant can inform the Boards of the proposal prior to the preparation of a detailed Planned Unit Development application. The Boards can review the basic design concept and advise the applicant as to potential problems and concerns and can generally determine the type of information that would be required for the Planned Unit Development application.

Section 13.5 Application Procedure

(A) Application

An applicant shall submit a completed application for a Planned Unit Development District and a preliminary Planned Unit Development Plan to the Zoning Inspector, who shall forward it to the Town Board. The Town Board shall review the application for the Planned Unit Development District and the preliminary Planned Unit Development Plan in consultation with the Planning Board.

(B) Hearing

Within 90 days of receipt of the complete application, the Town Board shall hold a public hearing on the proposed Planned Unit Development District and preliminary Planned Unit Development Plan. Notice of the public hearing and procedures at the public hearing shall be those established in Article 15, Amendments, of this local law. In addition to the required noticing provisions in Article 15, the Town Board shall mail a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of all property lines of the subject property at least ten (10) days prior to the public hearing.

At least 30 days prior to the public hearing, the Town Board shall refer the application to the Planning Board for its review and recommendation. The Planning Board shall submit its recommendation prior to or at the public hearing.

(C) Town Board Action

Within 120 days of receipt of the complete application, and after the public hearing, the Town Board shall act to approve, approve with modifications and/or conditions, or deny the application for a Planned Unit Development District and preliminary Planned Unit Development Plan.

- (1) If the application is approved, the Town Zoning Map shall be amended to show the location of the Planned Unit Development District.
- (2) The Town Board shall notify the applicant and the Planning Board in writing of its determination within five business days of the date of the action.
- (3) The Town Board shall place a copy of the notification on file in the office of the Town Clerk.

(D) Final Planned Unit Development Plan

- (1) Following the establishment and mapping of the Planned Unit Development District, the applicant shall submit a proposed Final Planned Unit Development Plan to the Planning Board. The proposed final plan shall be substantially consistent with the preliminary Planned Unit Development Plan that was approved by the Town Board.
- (2) Within 62 days of the receipt of a complete application for a Final Planned Unit Development Plan, the Planning Board shall act to approve or approve with modifications and/or conditions the Plan. If the Planning Board, in consultation with the Town Board, determines that the proposed Final Planned Unit Development Plan is not consistent with the approved preliminary Planned Unit Development Plan, the Planning Board shall deny the application.
- (3) The Planning Board's determination shall be filed in the office of the Town Clerk within five business days after such decision is rendered, and a copy of the decision shall be mailed to the applicant.

(E) Phasing of Planned Unit Developments

If the applicant intends to complete the Planned Unit Development in phases, that shall be stated as part of the application for a Planned Unit Development District and preliminary Planned Unit Development Plan. Applicant shall submit a phasing plan. The Town Board may act to approve and map the entire Planned Unit Development District and preliminary Planned Unit Development Plan, as well as the phasing plan. The Planning Board shall act to approve the Final Planned Unit Development Plan for one phase at a time, according to the approved phasing plan.

(F) Amendment of Planned Unit Developments

The applicant may apply to the Town Board to amend an approved Planned Unit Development District and preliminary Planned Unit Development Plan. The Town Board and Planning Board shall act on the amendment as if it were an original application, and shall follow all the review procedures stipulated above, including a public hearing and additional review under the NYS Environmental Quality Review Act.

Section 13.6 Application Requirements for Planned Unit Development District and Preliminary Planned Unit Development Plan

(A) Application for Planned Unit Development District

This application shall identify precisely the area to be included within the Planned Unit Development District. The application shall identify all types of proposed land uses.

(B) The Preliminary Planned Unit Development Plan

The Preliminary Planned Unit Development Plan shall be at a level of detail sufficient to allow the Town Board to evaluate it using the criteria in this local law and in Section 13.8. The application shall contain the following information and items:

- (1) A map of the existing site, showing the following information:
 - a. a vicinity map, showing the project site in relation to the surrounding area
 - b. scale and north arrow
 - c. site boundaries and dimensions
 - d. location and type of existing vegetation
 - e. The 100 year floodplain and any New York State designated wetlands
 - f. Existing structures and their current uses
 - g. Existing roads and other improvements
 - h. Location of public utilities and utility easements
 - i. Full Environmental Assessment Form (EAF)
 - j. Any other data that may be required by the Town Board

- (2) A map showing the major components of the proposed Planned Unit Development, including:
 - a. Scale and north arrow
 - b. The general location of all proposed buildings.
 - c. General dimensions of lot sizes and setbacks.
 - d. The proposed circulation system, including streets, driveways, and parking facilities, and showing access to the existing street system.
 - e. A general description of proposed drainage systems and runoff control
 - f. Topographic map showing existing topography and, in general, proposed grading of the site.

- (3) A written statement (or maps) containing the following information:
 - a. A general description of the types of landscaping and screening to be provided.
 - b. A statement of how water supply and waste disposal systems will be provided.
 - c. General description of architectural style, height, size and location of buildings.
 - d. A statement of the present and future ownership and tenancy of the Planned Unit Development.
 - e. A development schedule indicating the approximate date when construction of the Planned Unit Development, including any phases of the development, can be expected to begin and to be completed.
 - f. A statement of what facilities, if any, shall be offered for dedication to the Town
 - g. A statement of how the open space and/or common areas of the development shall be owned and maintained.

At its discretion, the Town Board may waive the requirement for submittal of one or more of the above listed items.

Section 13.7 Application Requirements for Final Planned Unit

The Final Planned Unit Development Plan application shall contain the following items:

(A) A map showing the details of the Planned Unit Development. The plan shall contain sufficient detail to evaluate the land planning, building design, and other features of the proposed Planned Unit Development.

The plan shall contain the following information, including:

- (1) scale and north arrow
- (2) Proposed name of the development
- (3) Topography of the site showing existing and proposed contours at no greater than five-foot intervals.
- (4) A complete site plan, as detailed in Article 10 of this local law.
- (5) The location and size of all existing and proposed buildings, structures and improvements.
- (6) The architectural style, colors and materials of all buildings, including elevations.
- (7) Maximum height, dimensions, and square footage of all buildings.
- (8) Area and dimensions of all lots proposed to be created as part of the project.
- (9) A landscaping plan
- (10) A complete circulation plan, including streets, driveways, parking areas and walkways.
- (11) Location and dimension of all recreational and open space areas.
- (12) Detailed drainage systems and runoff control
- (13) Detailed description of water supply and sewerage facilities.
- (14) A lighting plan
- (15) Any other information required by the Planning Board.

(B) A written statement containing the following information:

- (1) Offers of dedication, if any, to the Town for streets and other facilities. The Town Board shall act to accept or not accept any offers of dedication.
- (2) Copies of any special agreements, conveyances, restrictions, or covenants which will govern the use, maintenance and continued protection of the Planned Unit Development and its common areas, including the required open space areas.

At its discretion, the Planning Board may waive the requirement for submittal of one or more of the above listed items.

Section 13.8 Criteria for Review

In acting on an application for a Planned Unit Development, the Town Board and Planning Board shall consider the following criteria:

(A) Individual lots, buildings, streets, and parking areas shall be designed and located to minimize alteration of the prominent natural features of the site. Natural features include, but are not limited to, streambeds, wooded hillsides and landforms with slopes greater than fifteen percent (15%).

(B) Diversity and originality in lot layout and individual building design shall be encouraged to achieve the best possible relationship between the development and the land.

(C) Individual lots, buildings, and units shall be arranged and situated to relate to each other and to surrounding properties and to decrease the land area devoted to motor vehicle access.

- (D) Individual lots, buildings, units, and parking areas shall be situated to avoid the adverse effects of shadows, noise, and traffic on the residents of the site and on adjacent sites.
- (E) The design of the Planned Unit Development shall preserve any significant natural, scenic, or historic features of the site.
- (F) The Planned Unit Development shall be in harmony with the general purposes, goals, objectives and standards of the Town's comprehensive plan and this zoning law.
- (G) The Planned Unit Development shall not adversely affect neighboring property.
- (H) The Planned Unit Development shall have an adequate water supply and an adequate system for the disposal of sewage, which shall be approved, in writing, by the Cattaraugus County Health Department.
- (I) Streets and storm water drainage systems shall meet all the requirements of the Town of New Albion and New York State Department of Environmental Conservation (DEC).
- (J) The Planned Unit Development shall meet all the parking requirements of this zoning law. Use of shared parking areas is encouraged.
- (K) The adequacy of the proposed landscaping.
- (L) The adequacy of lighting for the Planned Unit Development and its lack on impact on neighboring properties.
- (M) The adequacy of the internal circulation system.
- (N) If new streets are proposed, they should connect into the Town's existing street pattern, to the maximum extent feasible. The number of driveway entrances onto the Town's existing street pattern should be minimized in order to promote traffic safety and flow.
- (O) Utility lines shall be placed underground.
- (P) The relationship of the proposed development to the one hundred (100) year floodplain, to state designated wetlands and to other geologic hazards.
- (Q) If reductions in lot sizes have been allowed, the Planned Development shall contain the open space required by Section 13.3 (F). The open space may be used for recreational purposes, or it may be used to preserve natural areas or scenic viewsheds. The open space area or areas shall be conveyed in such a manner that they remain permanent open space. The open space area or areas on the parcel may be conveyed to the Town of New Albion, or it may be held as private open space. In assessing the suitability and usability of the required open space, the Town Board shall use the following criteria:
 - (1) All Planned Unit Developments shall contain open space that is equivalent in area to the total reduction in lot size.
 - (2) The usability of open space intended for a recreational or public use shall be determined by the size, shape, topography, and location of the open space in relation to the particular use proposed for that site.
 - (3) Open space intended for a recreational or public use shall be easily accessible.

- (4) Open space shall include irreplaceable natural features, such as, but not limited to, stream beds, significant stands of trees, scenic vistas, and rock outcroppings.
- (5) The suitability of open space intended for scenic value and purposes shall be determined by its visibility from a significant number of units or buildings or from a significant length of public streets.
- (6) Open space shall not include areas devoted to public or private streets.

Section 13.9 Ownership and Maintenance of Open Space

- (A) Open space areas may be either public open space or private open space. As used herein, "public open space" means land owned by the Town of New Albion or some other governmental agency. "Private open space" means lands which shall be owned in common by all of the owners of all of the lots in a Planned Unit Development, lands owned by a Homeowners Association, or lands owned by a not-for-profit corporation or other similar legal organization.
- (B) If the open space is offered to the Town of New Albion, the Town Board shall decide whether or not to accept the open space dedication. In making its determination, the Town Board shall consider the intended use of the land, the size and location of the land, the availability of the open space to the public, and the cost of development and/or maintenance of such open space.
- (C) If the open space is not dedicated to the Town of New Albion, it shall be protected by legal arrangements, satisfactory to the Town Board, sufficient to assure its maintenance and preservation for whatever purpose is intended.
 - (1) Covenants or other legal arrangements shall specify ownership of the open space, the method of maintenance, responsibility for maintenance, maintenance taxes and insurance, compulsory membership and compulsory assessment provisions, guarantees that any association formed to own and maintain open space will not be dissolved without the consent of the Town Board, and any other specifications deemed necessary by the Town Board.
 - (2) In addition, The Town of New Albion shall be legally empowered to enforce the covenants in the event of failure of compliance. If the Town is required to perform any maintenance work, the Town shall be empowered to place a lien upon the properties in the development until said cost has been repaid to the Town.
 - (3) The covenant shall further require that the developer shall be a member of any association formed to own and maintain the open space; the developer's membership shall continue until all of the lots of record have been sold.

Section 13.10 Expiration of Approval for the Planned Unit Development

Construction of an approved Planned Unit Development shall commence within one year of the approval of a Planned Unit Development and shall continue in accordance with the schedule approved by the Town Board. If construction does not commence within this time period, or if construction does not continue according to the established schedule, the approval of the Planned Unit Development shall expire. An extension of the original approval may be granted by the Town Board, prior to its expiration, upon written application by the developer.

Section 13.11 State Environmental Quality Review Act

Prior to taking final action on an application for Planned Unit Development, the Town Board shall comply with all the requirements of the State Environmental Quality Review Act.

ARTICLE 14 ADMINISTRATION AND ENFORCEMENT

Section 14.1 General Procedure

(A) General Sequence of Steps

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

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

- (1) **Permitted Use.** A Zoning Permit for a permitted use may be issued by the Zoning Inspector of his own authority.
- (2) **Special Use.** A Zoning Permit for a Special Use may be issued by the Zoning Inspector upon order of the Planning Board, after a public hearing held by the Planning Board for the purpose of receiving information regarding the application.
- (3) **Zoning Permit After an Appeal or a Request for a Variance.** A Zoning Permit may be issued by the Zoning Inspector upon the order of the Zoning Board of Appeals and after a public hearing held by the Board of Appeals for the purpose of receiving information regarding the application or request for a variance.
- (4) **Zoning Permit After Site Plan Review.** A Zoning Permit may be issued by the Zoning Inspector upon the order of the Planning Board and after a public hearing held by the Planning Board for the purpose of receiving information regarding the application.

Section 14.2 Zoning Inspector

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

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

- (1) Examine applications pertaining to the use of land, buildings, and structures.
- (2) Receive, file and forward for appropriate action all applications for special uses, site plans, variances and amendments to this law.

- (3) Review permits for proposed development to insure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.
- (4) Issue Zoning Permits and Certificates of Compliance, when all provisions of this local law have been complied with, and keep permanent records thereof.
- (5) Conduct such inspections of buildings, structures and use of land as are necessary to determine compliance with the provisions of this zoning law.
- (6) Maintain permanent and current records of this zoning law, including all maps, amendments, special use permits issued, site plan approvals and variances granted.
- (7) Upon request by the subject board, review applications and make recommendations to the Town Board, Planning Board and Zoning Board of Appeals. When requested by the Chair of the respective boards, attend meetings of the Planning Board, Zoning Board of Appeals, and the Town Board.
- (8) Collect, receipt and account for all fees chargeable under the provisions of this local law and pay all of the same into the Town General Fund.
- (9) Any other duties which may be established by the Town Board.

(B) Zoning Permits

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

All Zoning Permits shall be issued in duplicate and one copy shall be kept conspicuously on the premises affected and protected from the weather whenever construction work is being performed thereon. No owner, contractor, worker or other person shall perform any building operations of any kind unless a Zoning Permit covering such operation has been displayed as required by this law, nor shall they perform building operations of any kind after notification of the revocation of said Zoning Permit.

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

(C) Certificates of Compliance

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

Section 14.3 Violations and Penalties

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

(B) Procedure for Abatement of Violations

(1) In case any building or structure is erected, constructed, altered, repaired, converted or maintained, or any building, structure or land is used in violation of this local law, notification of the violation will be issued in writing by the Zoning Inspector. Compliance with this zoning law must be met within the time period specified in the notice of violation.

(2) After the specified number of days, the Town Board, or with their approval, the Zoning Inspector, or any other proper person, authority or official, may commence an action to enforce this law.

(C) Penalties

A violation of this local law is an offense, punishable by a fine not exceeding \$250.00 or imprisonment for a period not to exceed fifteen (15) days, or both. Each week's continued violation shall constitute a separate additional violation.

(D) The provisions of this Article shall not limit the available procedures for enforcement and remedies provided for under the Town Law of the State of New York or any other law.

Section 14.4 Fees

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

Section 14.5 Article Seventy-eight Proceedings

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

ARTICLE 15 AMENDMENTS

Section 15.1 Town Board May Amend

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

Section 15.2 Planning Board Review

Every such proposed amendment or change, whether initiated by the Town Board or by petition, shall be referred to the joint Village/Town Planning Board for a report thereon prior to Town Board action on the proposal. If the Planning Board fails to submit such report within thirty (30) days of the date of referral, or within such longer time period as may be established by the Town Board, it shall be deemed that the Planning Board has approved the proposed amendment or change.

Section 15.3 Public Notice and Hearing

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

(A) Public Notice

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

(B) Public Hearing

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

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

Section 15.4 Adoption

- (A) Prior to final action by the Town Board on the proposed amendment, it shall be referred to the Cattaraugus County Planning Board following the provisions of Article 16 of this law.
- (B) Any such amendments may be approved by a simple majority vote of the Town Board, except that any such amendment shall require the approval of at least three-fourths of the members of the Town Board in the event such amendment is the subject of a written protest, presented to the Town Board and signed by:
 - (1) The owners of twenty (20) percent or more of the area of land included in such proposed change; or
 - (2) The owners of twenty (20) percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred (100) feet therefrom; or
 - (3) The owners of twenty (20) percent or more of the area of land directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land.

Section 15.5 Filing Requirements

- (A) Amendments made to this law, excluding any map incorporated therein, shall be entered in the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with the amendment.
- (B) A copy or a summary of the amendment, excluding any map incorporated therein, shall be published once in a newspaper published in the Town, if any, or in a newspaper having circulation in the Town.
- (C) A copy of the amendment, together with an abstract or summary of any amendment to the zoning map, shall be posted conspicuously at or near the main entrance to the office of the Town Clerk.
- (C) Affidavits of the publication of the summary shall be filed with the Town Clerk.
- (D) The Town Clerk shall maintain every map adopted in connection with this zoning law and every amendment thereto. Said documents shall be made available during regular business hours for public inspection.

ARTICLE 16:

MANDATORY REFERRAL

Section 16.1 Proposed Actions Subject to Referral

In accordance with the laws of New York State, the following proposed actions by the Town Board, the Planning Board or the Zoning Board of Appeals shall be referred to the Cattaraugus County Planning Board for its review and recommendation before final action is taken by the local board. These items shall be referred only if they meet the geographic requirements in Section 16.2.

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

Section 16.2 Geographic Criteria

The proposed actions set forth in Section 16.1 shall be subject to the referral requirements of this article if they apply to a parcel or lot within five hundred (500) feet of any of the following:

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

Section 16.3 County Planning Board Review

- (A) The Cattaraugus County Planning Board shall have thirty (30) days after receipt of a full statement of the proposed action, or such longer period as may have been agreed upon by the County Planning Board and the local board, to report its recommendations to the local board. The County Planning Board's report shall include a statement of the reasons for its recommendation.
- (B) If the County Planning Board recommends modification or disapproval of a proposed action, the local board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members thereof.
- (C) If the County Planning Board fails to report back to the local board within thirty (30) days, or other such time period as may have been agreed to, the local board may take final action on the proposed action without such report. However, any report by the County Planning Board that is received two or more days prior to final action by the local board shall be subject to the provisions of this Article.

Section 16.4 Report of Final Action

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