

Village of Allegany Zoning Law

Adopted July 7, 2003
Amended August 11, 2008

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**Prepared with the Assistance of
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ARTICLE I INTENT AND PURPOSE

In order to promote the public health, safety, and general welfare of the Village of Allegany, and in order to protect and enhance the general character of the community, to conserve and protect property and property values, to secure the most appropriate use of land, to facilitate the development of the community, to prevent the overcrowding of land, and to facilitate adequate but economical provision of public improvements, in accordance with a comprehensive plan, the Board of Trustees of the Village of Allegany finds it necessary, advisable and appropriate to regulate the location, size and use of buildings, structures and land, and for such purpose divides the incorporated area of the Village of Allegany into districts or zones. The Village's Vision Statement, which was adopted by the Village of Allegany Board of Trustees, as well as any other accepted planning policies, shall serve as a guide to future development and redevelopment within the Village.

ARTICLE II ENACTING CLAUSE

Pursuant to the authority conferred by Article 7 of the Village Law of the State of New York and for each of the purposes specified therein, the Board of Trustees of the Village of Allegany, County of Cattaraugus and State of New York has ordained and does hereby enact the following local law.

ARTICLE III SHORT TITLE

This local law shall be known and may be cited as the "Zoning Law of the Village of Allegany, Cattaraugus County, New York," and shall constitute Article XIX of the General Municipal Code of the Village of Allegany, New York.

ARTICLE IV RULES AND DEFINITIONS

Section 4.1 Rules

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

- (a) Words used in the present tense shall include the future tense.
- (b) Words used in the singular shall include the plural, and words used in the plural shall include the singular.
- (c) Words used in the masculine form shall include the feminine.
- (d) The word "shall" is mandatory. The word "may" is permissive.
- (e) The word "lot" shall include the words "plot," "piece," and "parcel."
- (f) The word "person" shall include an individual, firm, trust, partnership, association or corporation.
- (g) The phrase "used for" shall include the phrases "arranged for," "designed for," "intended for," "maintained for," and "occupied for."
- (h) The phrases "to erect," "to construct," and "to build" a structure have the same meaning and include the excavation for a structural foundation and the relocation of a structure from one location to another.

Section 4.2 Definitions

ABANDONMENT To cease or discontinue a use.

ACCESSORY APARTMENT A separate and complete dwelling unit that is located on the same parcel of land as a single-family dwelling. The accessory apartment shall be secondary in size and clearly subordinate to the single-family dwelling.

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

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

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

ADMINISTRATIVE BUILDING A type of office building that serves as the headquarters or managerial center for an organization or company.

ADULT ENTERTAINMENT ESTABLISHMENT Whenever used in this local law, the words "adult entertainment establishment," "adult entertainment establishments," "adult use" or "adult uses" apply to the following types of establishments:

- (a) **ADULT BOOKSTORE** An establishment which has as a substantial or significant portion of its stock in trade, books, pamphlets, magazines and other periodicals, sculptures, photographs, pictures, slides, videotapes, films, or sound recordings, and which establishment excludes any minor by reason of age.
- (b) **ADULT ENTERTAINMENT CABARET** A public or private nightclub, bar, juice bar, restaurant or similar establishment which presents topless or bottomless dancers, waitresses or waiters, strippers, male or female impersonators, exotic dancers, or other similar entertainment, and which establishment excludes any minor by reason of age.
- (c) **ADULT VIDEO STORE** An establishment having as a substantial or significant portion of its sock in trade, videotapes or films for sale or viewing on premises by use of motion picture devices, video equipment, coin operated devices or other means, and which establishment excludes any minor by reason of age.
- (d) **PEEP SHOW** A theater which presents material in the form of live shows, films, or videotapes viewed from an enclosure for which a fee is charged and which excludes any minor by reason of age.
- (e) **MASSAGE ESTABLISHMENT** Any establishment having a fixed place of business where massages are administered for pay, including but not limited to massage parlors, sauna baths and steam baths. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or duly licensed physical therapist or duly licensed massage therapist, or barber shops or beauty salons in which massages are administered only to the scalp, face, neck, or shoulders. This definition shall also exclude health clubs which have facilities for physical exercise such as tennis courts, racquet ball courts or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.
- (f) **ADULT MOTEL OR HOTEL** A motel or hotel which excludes minors by reason of age or which makes available to its patrons in their rooms films, slide shows, or videotapes, which if presented in a public movie theater would exclude any minor by reason of age.
- (g) **ADULT THEATER** A theater that customarily presents motion pictures, films, videotapes, or slide shows and that excludes any minor by reason of age.

(h) **BODY PAINTING STUDIO** An establishment or business which provides the service of applying paint or other substance, whether transparent or non-transparent, to or on the human body and which excludes any minor by reason of age.

(i) **ADULT MODEL STUDIO** Any establishment where, for any form of consideration or gratuity, figure models are provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by persons other than the proprietor, paying such consideration or gratuity and which excludes any minor by reason of age. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution, which meets the requirements established in the New York State Education Law for the issuance or conferring of, and is in fact authorized to issue or confer a diploma.

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 any portion or by increasing in height, or the moving from one location or position to another.

ANIMAL, FARM Poultry, dairy and beef cattle, horses, oxen, sheep, goats, swine and pigs, llamas, bison, ostriches and emus, or any similar domesticated or semi-domesticated animal, but not including household pets.

ANIMAL, EXOTIC Any wild animal not customarily used by humans for domestic or commercial purposes. This definition of "exotic animal" shall include fur-bearing animals such as minks and chinchillas. "Exotic Animal" shall include, but not be limited to, lions; tigers; elephants; all species of monkeys, apes, chimpanzees, and wolves.

ANIMAL 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.

APARTMENT A room or suite of rooms, with toilet and kitchen facilities, used or designed for use as a residence by a family, located in a building containing two or more such rooms or suites or located in a building devoted primarily to nonresidential use.

AREA, BUILDING The total of areas taken on a horizontal plane at the main grade level of the principal building and all accessory buildings, not including uncovered porches, decks, 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 establishment where handmade crafts and arts are produced and sold. An arts and crafts studio may house occupations such as painting, sculpting, pottery, weaving, glass-blowing, jewelry-making, woodworking, furniture making, candle-making, and similar crafts and arts.

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. All work shall be conducted within a wholly enclosed building or buildings.

AUTOMOBILE-DEPENDENT DEVELOPMENT Development designed with an emphasis on accommodating automobiles, rather than development designed with an emphasis on pedestrians. Automobile-dependent development usually has the main entrance of the building oriented to a parking area, instead of to the street.

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, motorcycles, recreational vehicles, boats, snowmobiles, ATVs, and/or other motor vehicles are available for sale.

BANK See "financial institution."

BAR A commercial establishment licensed by the State of New York to serve alcoholic beverages and which is designed primarily for the consumption of such alcoholic beverages on the premises, irrespective of whether or not food and/or entertainment are also provided as accessory uses.

BARBER SHOP See "Hairdressing Establishment."

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 RESIDENCE A single-family residential dwelling in which the resident owner makes available a room or rooms as a sleeping unit or units for overnight

accommodations for transient paying guests, with or without the inclusion of one morning meal per paying guest as part of the accommodations provided.

BOARD OF TRUSTEES The Board of Trustees of the Village of Allegany, County of Cattaraugus, New York.

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

BOARDER A person who rents a bedroom within an owner-occupied dwelling on a long-term, residential basis. Meals may or may not be provided to the boarder, but there is only one kitchen in the dwelling.

BOWLING ALLEY A commercial recreation establishment that devotes more than 50 percent of its gross floor area to bowling lanes, equipment and playing area.

BREW PUB A restaurant that includes the brewing of beer as an accessory use intended for consumption on the premises. Such accessory use may occupy up to 30 percent of the gross floor area of the restaurant.

BUILDABLE AREA The space remaining on a lot after compliance with the minimum setback requirements of this local zoning law.

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, PRINCIPAL See "Principal Building."

BUILDING HEIGHT See "height."

BUILDING OFFICIAL The official who is responsible for enforcing the Village's building code.

BUILDING PERMIT The permit issued by the building official permitting or allowing structural alteration or construction on a lot. See Article X.

CALIPER A measurement of the diameter of a tree, measured six inches above the ground.

CAR WASH A commercial establishment containing facilities for washing and/or waxing private automobiles, recreational vehicles, and similar motor vehicles. Coin-operated facilities open on a self-service basis shall be construed to be car washes.

CELL The geographical area serviced by a BTS (base transceiver station).

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 ZONING COMPLIANCE A certificate issued by the Code Enforcement Officer that certifies that the conditions specified in this zoning law have been met and that the intended use is allowable in the zoning district in which it is located. Said certificate shall acknowledge any adjustments to the requirements of this law granted by the Zoning Board of Appeals or any conditions of approval imposed by the Planning Board. Certificates of zoning 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 building official upon completion of construction, alteration or change in occupancy or use of a building, which certifies that the building or structure is in compliance with the New York State Building Code.

CHARITABLE INSTITUTION: Nonprofit organization that is supported primarily by charity and whose principal function is the performance of charitable works or religious activities. Such activities may include the giving of foods, goods, financial assistance, or grants or offering services or other socially useful programs on a benevolent, nonprofit basis. A "club" shall not be construed to be a "charitable institution."

CIVIC FACILITY Buildings, structures, and other facilities owned and/or operated by the Village of Allegany, the Town of Allegany, the Fire District, and/or other public agencies and regularly used for neighborhood 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 (CEO) The official who is responsible for the administration and enforcement of this zoning law.

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

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). Facilities that allow the riding of ATVs, snowmobiles, go-carts, or similar vehicles for a fee shall not be included in the definition of outdoor commercial recreation.

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

CONVENT A primarily residential land use in which the members of a religious order share communal living and dining facilities. A convent may also contain a house of worship. See "monastery."

COVERAGE That percentage of the lot area covered by the building area.

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

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, excluding those facilities regulated by Section 390 of New York State Social Services Law.

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

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

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.

DISTRIBUTION CENTER An establishment where goods and/or packages are received and/or stored for delivery to the ultimate recipient at remote locations.

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.

DRIVEWAY A vehicular accessway, which is connected at one end to a street, and which provides vehicular ingress to and/or egress from a lot.

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.

EVERGREEN A plant that holds its leaves throughout the year.

EXOTIC ANIMAL See "animal, exotic."

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 One or more persons related by blood, adoption, or marriage, living or cooking together as a single housekeeping unit, or not more than four (4) persons in such a unit who are not so related. In the later instance, and in all instances involving unrelated persons, the principal use and accessory use for boarders, when taken together, shall not be construed as permitting "family use" by more than four (4) unrelated persons, under any circumstances.

FARM ANIMAL See "animal, farm."

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.

FEED STORE A commercial establishment engaged in retail sale of animal feed and other supplies that are directly related to the day-to-day activities of agricultural production.

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 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.

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, basement or cellar, unfinished attic, carport, garage, or sunroom (unless such sunroom is habitable at all seasons of the year).

FINISHED GRADE See "Grade, finished."

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 slaughterhouse or meat packing plant.

FULL STATEMENT OF PROPOSED ACTION For a referral to the Cattaraugus County Planning Board, which may be required by Section 239-m of New York State General Municipal Law, a "full statement of the proposed action" shall mean all materials that have been submitted to the Village by the applicant of a referred proposed project, including a completed environmental assessment form.

FUNERAL HOME 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 funeral home shall not include facilities for cremation.

FRONTAGE That part of a lot abutting on a street; except that the ends of incomplete streets, or streets without a turning circle shall not be considered frontage. On curvilinear streets, the arc between the side lot lines shall be considered the lot frontage.

GARAGE, PRIVATE An accessory building, or part of the principal residential building, which is designed or used for the storage of motor vehicles. A private garage may not be used for commercial automotive repair.

GASOLINE 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 major automotive repairs, collision service and/or automobile painting.

GASOLINE STATION WITH MINI-MART An establishment 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 An establishment for playing the game of golf and having tees, greens, fairways and hazards. A golf course may have a clubhouse as an accessory use.

GRADE, FINISHED The elevation at which the finished surface of the surrounding lot meets the walls or supports of a building or structure.

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.

HAIRDRESSING ESTABLISHMENT An 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.

HEIGHT The vertical distance measured from the average elevation of the proposed finished grade to the highest point of a building or structure. If the finished grade is not reasonably horizontal, the average elevation of all sides of the structure/building shall be used for purposes of computing the height of the building or structure.

HISTORIC RESOURCE Any historic building, structure, facility, site or district, or prehistoric site that is listed on the State and/or National Registers of Historic Places. Any historic building, structure, facility site or district or prehistoric site that has been proposed by the 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. Any locally significant historic resource designated pursuant to Article 5-K of the New York State General Municipal Law.

HOME BASED BUSINESS Any land use or activity undertaken for gain within a dwelling unit, or within a structure that is accessory to the dwelling unit and on the same lot, by the resident or residents thereof. A home-based business is an accessory use, and shall be clearly incidental and secondary to the use of the structure as a residence. See also Article IX.

HOSPICE A licensed facility that provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual and special needs of terminally ill patients and their families, whether on an inpatient or outpatient (home based) basis.

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.

HOUSE 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. A "house of worship" shall not include "convent" or "monastery."

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

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

INN See "hotel."

INOPERABLE No longer capable of performing the purpose for which an object is designed.

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

- (1) one or more junk vehicles
- (2) One or more junk mobile homes
- (3) one or more inoperable pieces of construction equipment
- (4) one or more discarded or inoperable household appliances including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers and televisions.
- (5) one or more discarded or irreparably damaged pieces of furniture, including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
- (6) disassembled vehicle parts or other disassembled machinery or appliances.
- (7) Parts of machinery, or parts of vehicles, or parts of appliances.
- (8) Tires which do not meet New York State requirements for highway use.
- (9) scrap metal, paper, rags, or lumber, except that cordwood being used for household purposes shall not be construed to be "junk."

JUNK MOBILE HOME Any enclosed dwelling built upon a chassis, used or designed to be used for either permanent or temporary living and/or sleeping purposes, including motor homes, truck campers, camping trailers, campers, travel trailers, pop-up trailers, tent trailers and overnight trailers; which meets two out of three of the following conditions for six months or more:

- (1) the electrical service is disconnected or terminated;
- (2) it is abandoned as a dwelling unit;
- (3) it is no longer habitable for residential occupancy, pursuant to the New York State Building Code.

JUNK VEHICLE

- A.** Any vehicle intended for travel on the public highways or waterways which is:

- (1) Unlicensed for a period in excess of six (6) months, **or**
 - (2) Abandoned, wrecked, discarded, dismantled, or partly dismantled.
- B.** Any vehicle not required to be licensed or any vehicle not intended for use on public highways or on waterways shall be deemed a junk vehicle if:
- (1) Such vehicle has remained unused for more than six (6) months, and
 - (2) It is not in usable condition, according to the standards set forth in the owner's manual.
- C.** Any used parts or waste materials which, taken together, equal in bulk one or more such vehicles.

Exceptions: Automobile dealers licensed by New York State and conducting business in accordance with the regulations of this zoning law are excluded from this provision. Individuals who have received a permit for storage of an unlicensed vehicle pursuant to the Village's Property Maintenance Law are also excluded from this provision.

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

- (1) two or more junk vehicles
- (2) two or more junk mobile homes
- (3) two or more inoperable pieces of construction equipment
- (4) two or more discarded or inoperable household appliances, including but not limited to washers, dryers, dishwashers, stoves, refrigerators, freezers, and televisions.
- (5) two or more discarded or irreparably damaged pieces of furniture, including but not limited to sofas, lounge chairs, mattresses, bed frames, desks, tables, chairs and chests of drawers.
- (6) Any combination of the above or parts of the above that total two or more items.
- (7) disassembled vehicle parts or other disassembled machinery or appliances, or scrap metal, paper, lumber or rags.

LANDSCAPING Any combination of living plants (such as grass, ground cover, shrubs, vines, hedges, or trees) and nonliving landscape material (such as rocks, pebbles, mulch, walls, fences, or decorative paving materials).

LAUNDROMAT A commercial establishment where laundry machines, using only water, and clothes dryers are made available to the public. A laundromat may also provide a drop-off, pick-up laundry service.

LINE, STREET See "street line."

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 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 See "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.

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 stored and offered for retail sale.

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 or recreational vehicle.

MANUFACTURING The mechanical or chemical transformation of materials or substances into new products, including the assembling of component parts, the making of products, and the blending of materials. Incidental packing and storage of such products may also be included. All manufacturing activities shall comply with the performance requirements set forth in Article IX of this law.

MANUFACTURING, HEAVY Manufacturing or compounding process of raw materials. These activities or processes would necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the manufacturing process. These activities may involve outdoor operations as part of the manufacturing process. Any manufacturing activities that are classified as Section 307, High-Hazard Group H, shall be considered to be "heavy manufacturing."

MANUFACTURING, MEDIUM Manufacturing or the processing of materials or products predominately from extracted or raw materials. These activities do not necessitate the storage of large volumes of highly flammable, toxic matter or explosive materials needed for the

manufacturing process. All manufacturing activities shall comply with the performance requirements set forth in Article IX of this law

MANUFACTURING, RESTRICTED Any manufacturing or industrial processing which by the nature of the materials, equipment and process utilized is to a considerable measure clean, quiet and free of any objectionable or hazardous element. All manufacturing activities shall comply with the performance requirements set forth in Article IX of this law.

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.

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 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.

MONASTERY A primarily residential land use in which the members of a religious order share communal living and dining facilities. A monastery may also contain a house of worship. See "convent."

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.

NON-CONFORMING STRUCTURE Any structure, legally existing at the time of enactment of this law, which does not meet the regulations on structure size or location on a lot for the district in which such structure 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 structure, 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 establishment for two or more children ages two to five, which provides instruction as well as child care.

OFFICE A room or group of rooms used for conducting the affairs of a business, profession, service industry or government.

OFFICE BUILDING A building used primarily for offices that may include ancillary services for office workers, such as a restaurant, coffee shop, or newspaper stand.

OFFICE, PROFESSIONAL The use of a building, or part thereof, for offices by one or more members of a recognized profession, including a doctor, physician, surgeon, dentist, or such other persons licensed by the state of New York to practice a healing art; lawyer; accountant; architect, planner, or engineer; real estate broker or real estate salesperson; or insurance broker or insurance agent; or similar professions.

OPEN STORAGE Storage other than in a completely enclosed structure.

PARISH HALL An accessory use to a house of worship, in which rooms for assembly are available. A parish hall may also contain office space for the administration of the institution.

PARK Any public land available for recreational, educational, cultural or aesthetic use.

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, OFF-STREET Space for a motor vehicle on a lot, not on the street right-of-way.

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

PARKING STRUCTURE A structure, whether privately or publicly owned, which is 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.

PEDESTRIAN-ORIENTED DEVELOPMENT Development designed with an emphasis primarily on the street sidewalk and on pedestrian access to the site and building, rather than on auto access and parking areas. The building is generally placed close to the street and the main entrance is oriented to the street sidewalk. There are generally windows or display cases along building facades that face the street. Typically, buildings cover a large portion of the site. Although parking lots may be provided, they are generally limited in size and they are not emphasized in the site design.

PERMITTED USE A use permitted in a zoning district without the need for special administrative review and approval, upon satisfaction of the requirements and standards of this local law.

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.

PET See "household pet."

PHARMACY See Drug Store.

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

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

PLOT PLAN A map of a lot, drawn to scale, showing the actual measurements, the size and location of all existing and proposed structures in relationship to the property lines and abutting streets.

PRINCIPAL BUILDING A building in which the primary use of the lot is conducted.

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

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

PRINT SHOP A commercial establishment which provides the reproduction of written or graphic materials on a custom order basis for individuals or businesses. Typical processes include, but are not limited to, photocopying, blueprint, offset printing, and silk screening. A print shop may also send and receive facsimile transmissions for a fee.

PROFESSIONAL OFFICE See "office, professional."

PUBLIC USE Government-owned and/or rented/leased facilities to which the public has access, such as public parks, public schools, village hall and other governmental administrative and/or office buildings, but 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.

PUBLIC UTILITY FACILITY A facility, other than a telecommunication tower or telecommunication antenna, for the provision of public utility services, including facilities

constructed, altered or maintained by utility corporations, either public or privately owned, or government agencies, necessary for the provision of electricity, gas, steam, heat, communication, water, sewerage collection, or other such service to the general public. Such facilities shall include poles, wires, mains, drains, sewers, pipes, conduits, cables, alarms, and call boxes and other similar equipment, but shall not include office or administration buildings. For purposes of this zoning law, telecommunication towers or telecommunication antennas, defined separately in this law, shall not be governed by the zoning regulations that apply to the broader definition of public utility facilities, but shall be governed by the specific telecommunications facilities regulations of this law.

RECREATION VEHICLE (RV) A vehicular-type unit primarily designed as temporary living quarters for recreational, camping or travel use, which either has its own motive power or is mounted on or towed by another vehicle. A recreation vehicle is not designed or intended for use as a permanent dwelling. "Recreation vehicle" includes vehicles such as trailers, campers, travel trailers and boats. A recreation vehicle is not a manufactured home or a mobile home.

RECTORY The permanent place of residence of a pastor or minister of a church or other house of worship. The rectory may contain, as an accessory use, a small office in which affairs of the church or parish are conducted. A rectory may also be known as a parish house or parsonage.

RECYCLING CENTER An industrial establishment designed to be a collection point where recyclable materials are sorted and/or temporarily stored prior to delivery to a permanent disposal site or shipment to others for reuse or reprocessing. Recyclable materials include, but are not limited to, metal; cans; glass; plastics, and newspaper, books and other paper products. Oil, batteries, and other hazardous materials shall not be considered to be "recyclable materials" for the purpose of this local law.

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

REPAIR SHOP, PERSONAL SERVICE A commercial 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 A commercial 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-IN A commercial establishment consisting of a building and adjoining parking lot in which food, soft drinks, ice cream and similar items are sold for

consumption on the premises by customers in vehicles or outside of the main building, regardless of whether or not incidental seating is provided inside for patrons.

RESTAURANT, TAKE-OUT Establishments where food is usually ordered by telephone and prepared on the premises for consumption off the premises. The establishment may deliver food to the customer, or the customer may pick up the food, or both. A take-out restaurant may have incidental seating for consumption of food on 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.

RETAIL BUSINESS, LARGE A retail business that contains more than 20,000 square feet of gross floor area on the first floor.

RETAIL BUSINESS, SMALL A retail business that contains 20,000 square feet or less of gross floor area on the first floor.

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.

SCENIC RESOURCE Any road, highway, lane, river, 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 New York State's Coastal Management Program (19 NYCRR 602.5).

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, middle schools, and/or high schools.

SCHOOL, COMMERCIAL A school conducted for profit, including dancing schools, music schools, business and secretarial schools.

SETBACK LINE The minimum distance by which any building or structure must be separated from a street right-of-way or lot line.

SETBACK, FRONT YARD The minimum allowable distance from the street right-of-way line to the closest point of a building or structure.

SETBACK, SIDE YARD The minimum allowable distance from the side lot lines to the closest point of a building or structure. The side yard setback shall extend from the front yard setback to the rear yard setback, or from the front right-of-way line to the rear property line in cases where a front and/or rear yard setback are not required.

SETBACK, REAR YARD The minimum allowable distance from the rear property line to the closest point of a building or structure.

SHED An accessory building used primarily for storage purposes, with a height not taller than seven feet and a total square footage which does not exceed 140 square feet.

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

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. The term "sign" shall not include seasonal holiday decorations.

SIGN, A-FRAME (SANDWICH BOARD SIGN) Two back-to-back sign boards, attached or hinged at the top, with the bottom spread apart so that the bottom of the sign rests on the ground. An A-frame sign may have legs, instead of the entire bottom of the sign touching the ground. An A-frame sign may also be of a design similar to an easel, with only one sign face. An A-frame sign is a type of portable sign.

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, BANNER Signs mounted on the building wall that are vertically oriented. Banner signs shall be permanently mounted at both the top and bottom of the sign.

SIGN, CHANGEABLE COPY A sign designed to have changeable copy, either manually or electronically. A changeable copy sign is permanently affixed to a building wall or a permanent structural support, and is not a portable sign. The message on a changeable copy sign may be changed daily or periodically, but shall not flash messages that change every moment. A sign that shows only the time and temperature shall not be construed to be a changeable copy sign.

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 A sign that is attached to, erected on, or supported by some structure (such as a pole, post, or mast) which is placed in or on the ground and which is

independent from any building or other structure. A freestanding sign can be either a ground sign, a pole sign or a post 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 the ground.

SIGN, ILLUMINATED Any sign illuminated by electricity or other artificial light, either from the interior or exterior of the sign.

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, 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. Signs placed by a public agency for a public purpose shall not be construed to be snipe signs.

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. A vehicle used for business purposes, and which is driven on a regular basis, that contains a business logo or sign shall not be construed to be a "vehicle sign."

SIGN, TEMPORARY A sign intended to be displayed for a limited time period.

SIGN, WALL Any sign attached parallel to a wall, painted on the wall surface, 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 face.

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 XIII of this law.

SLAUGHTERHOUSE A building used for the for-profit slaughtering of animals that are either raised on-site or are transported to the site, and the processing and storage of animal products and waste that result from the slaughtering process.

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

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.

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.

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

STREET LINE The line between the street right-of-way and abutting property.

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

TAVERN See "bar."

TELECOMMUNICATION 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.

TELECOMMUNICATION ANTENNA A system of electrical conductors that transmit or receive radio frequency waves.

TELECOMMUNICATIONS FACILITY Any or all of the physical elements of the central cell facility that contains all the receivers, transmitters, and other apparatus needed for cellular or PCS (Personal Communication Services) operation (also known as base transceiver station or BTS).

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

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

THRIFT STORE A non-profit, small retail business establishment that engages in the sale or resale of previously owned merchandise, such as clothing, toys, jewelry, and small household items, which are donated to the establishment. The proceeds (after operating expenses) from the sale of the merchandise shall be used for charitable purposes.

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

USE, ACCESSORY See "Accessory Use."

USE, PERMITTED See "Permitted 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.

VEHICLE Any means of transport or conveyance originally intended for travel on the public highways, private property or public or private waterways, which was originally designed and manufactured (1) to be moved or propelled by any power other than muscular power; or (2) to be drawn or towed.

VILLAGE BOARD The Village Board of Trustees of Allegany, Cattaraugus County, New York.

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

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 space on a lot, which extends across the full width of the lot between the front lot line and the nearest part of a building or structure.

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.

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

ZONING PERMIT A permit issued by the Code Enforcement Officer, 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 V GENERAL PROVISIONS

Section 5.1 General Regulations

- (A) **Uses Prohibited.** Any use not specifically permitted in this law shall be deemed to be prohibited, and shall not be allowed except upon amendment to this zoning law.
- (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 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 laws, ordinances and regulations which are more restrictive, or which impose higher standards or requirements, shall govern.
- (D) **Effect 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 structure, building or land shall hereafter be used or occupied and no structure, 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 structure or 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 yards specified herein for the district in which such structure or building is located.
 - (3) No part of a yard or other open space about any structure or 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, frontage, 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 structures, buildings and/or 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 of Record.** Any lot of record, which legally existed at the time of the initial adoption of the local zoning law for the Village of Allegany or which was legally created under the provisions of any zoning law then in effect, and which does not meet the requirements for minimum frontage and/or minimum area (lot size) of this zoning law, may be used for a permitted use, without first obtaining an area variance, provided that the minimum setback requirements and the minimum open area requirements are not less than seventy-five (75) percent of the minimum required dimension.

Section 5.4 Access to Street

- (A)** Except as otherwise provided for in this local law, every building or structure shall be constructed or erected upon a lot which abuts upon an existing street or a street that is recorded on a subdivision plat recorded in the office of the Clerk of Cattaraugus County.
- (B)** If such street is a private street, it shall meet all of the Village of Allegany's width and construction requirements for a public street.
- (C)** Upon proper application therefor, the Zoning Board of Appeals may issue a variance for a building or structure that does not abut upon an existing or recorded street, provided that such lot abuts upon an easement which provides access to a street, and such easement is of sufficient width, surface, nature and character to accommodate necessary emergency vehicles, and such easement is properly recorded in the office of the Clerk of Cattaraugus County.

ARTICLE VI ESTABLISHMENT OF DISTRICTS

Section 6.1 Districts

For the purposes and provisions of this local zoning law, the Village of Allegany establishes the following zoning districts:

R-1	Single Family Residential District
R-2	Two-family Residential District
R-3	General Residential District
B-1	Village Business District
B-2	Commercial-Residential District
B-3	General Business District
I-1	Industrial District
F-O	Floodplain Overlay District

Section 6.2 Zoning Map

The locations and boundaries of the aforesaid zoning districts are hereby established on a scaled map, entitled "Village of Allegany Zoning Map," which is kept on file by the Village 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 Village of Allegany 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 Village of Allegany 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 Zoning Board of Appeals, 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 Village Board, following the procedures established in Article XV of this law. A copy of the zoning map showing the determination of the Zoning Board of Appeals shall be kept on file by the Village 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.
- (B) In all cases where a zoning district boundary line is located 15 feet or less 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 VII DISTRICT USE REGULATION

Section 7.1 Zoning Districts

(A) R-1 Single Family Residential District

(1) Purpose

The purpose of the R-1 Single Family Residential District is to allow single family residential development at a scale that is appropriate to the village. A limited number of public and semi-public uses that are compatible with residential use may also be permitted.

(2) Permitted Uses

The following use is allowed in the R-1 Single Family Residential District:

Single family dwellings

(3) Accessory Uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the R-1 Single Family Residential District, and which are located on the same lot as the principal building or use, shall be allowed. These uses may include, but are not limited to, the following:

Home-based businesses, minor

Sheds

Private garages that do not exceed 676 square feet in gross floor area on the ground floor

Private swimming pools

(4) Special Permitted Uses

The following uses may be permitted in the R-1 Single Family Residential District upon obtaining a Special Use Permit from the Planning Board:

Home-based businesses, major

Houses of worship

Keeping of roomers or boarders in an owner-occupied dwelling, provided the occupancy of the dwelling does not exceed four (4) unrelated persons

Public parks

Public and private elementary and secondary schools
Public uses
Public utility facilities
Rectories

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

(B) R-2 Two-family Residential District

(1) Purpose

The purpose of the R-2 Two-family Residential District is to allow single family and two-family residential development at a scale that is appropriate to the village. The Village recognizes the need to regulate new construction of two-family dwellings and the conversion of existing buildings to new two-family dwellings to ensure that lots are large enough to accommodate this type of use without overwhelming public services and to ensure that existing residential neighborhoods are protected from traffic congestion, parking problems and other potential nuisances. A limited number of public and semi-public uses and professional activities that are compatible with residential use may also be permitted.

(2) Permitted Uses

The following uses are allowed in the R-2 Two-family Residential District:

Single family dwellings
Two-family dwellings, on lots that contain a minimum of 8,000 square feet, have a minimum lot depth of 110 feet, and have a minimum lot frontage of 70 feet.
Houses of worship
Rectories

(3) Accessory Uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the R-2 Two-family Residential District, and which are located on the same lot as the principal building or use, shall be allowed. These uses may include, but are not limited to, the following:

Home-based businesses, minor
Sheds
Private garages that do not exceed 676 square feet in gross floor area on the ground floor
Private swimming pools

(4) Special Permitted Uses

The following uses may be permitted in the R-2 Two-family Residential District upon obtaining a Special Use Permit from the Planning Board:

- Accessory Apartments
- Bed and Breakfast residence
- Charitable Institution
- Day care facilities, child and adult
- Funeral homes
- Home-based businesses, major
- Keeping of roomers or boarders in an owner-occupied dwelling, provided the occupancy of the dwelling does not exceed four (4) unrelated persons
- Nursery schools
- Private garages that exceed 676 square feet in gross floor area on the ground floor
- Professional offices
- Public parks
- Public and private elementary and secondary schools
- Public use
- Public utility facilities
- Thrift Store

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

(C) R-3 General Residence District**(1) Purpose**

The purpose of the R-3 General Residence District is to allow a variety of housing types at a scale that is appropriate to the village. The Village recognizes the need to regulate the construction of new two-family and multiple family dwellings and the conversion of existing buildings to two-family and multiple family dwellings to ensure that lots are large enough to accommodate this type of use without overwhelming public services and to ensure that existing residential neighborhoods are protected from traffic congestion, parking problems and other potential nuisances that may result from overcrowding. A limited number of public and semi-public uses and professional activities that are compatible with residential use may also be permitted.

(2) Permitted Uses

The following uses are allowed in the R-3 General Residence District:

Single family dwellings

Two-family dwellings, on lots that contain a minimum of 8,000 square feet, have a minimum lot depth of 110 feet, and have a minimum lot frontage of 70 feet.

Houses of worship

Rectories

(3) Accessory Uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the R-3 General Residence District, and which are located on the same lot as the principal building or use, shall be allowed.

These uses may include, but are not limited to, the following:

Home-based businesses, minor

Sheds

Private garages that do not exceed 676 square feet in gross floor area on the ground floor

Private swimming pools

(4) Special Permitted Uses

The following uses may be permitted in the R-3 General Residence District upon obtaining a Special Use Permit from the Planning Board:

Accessory Apartments

Bed and Breakfast residence

Cemeteries

Charitable Institution

Convents and monasteries

Day care facilities, child and adult

Funeral homes

Home-based businesses, major

Hospice

Keeping of roomers or boarders in an owner-occupied dwelling, provided the occupancy of the dwelling does not exceed four (4) unrelated persons

Multiple family dwellings

Nursery schools

Private garages that exceed 676 square feet in gross floor area on the ground floor

Professional offices

Public parks

Public and private elementary and secondary schools

Public use

Public utility facilities

Thrift Store

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

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

The purpose of the B-1 Village Business District is to permit and promote opportunities for a diversity of retail businesses and personal services that meet the needs of the residents of the Village of Allegany, surrounding areas, and visitors. The emphasis in this district shall be placed on promoting the historic retail core of the Village. Therefore, residential development is discouraged, except for apartments over commercial establishments. Development in this district shall be consistent with the historic character of this downtown village center. Emphasis shall be placed on pedestrian-oriented, rather than automobile-dependent, development.

(2) Permitted Uses

The following uses are allowed in the B-1 Village Business District:

- Apartments over first floor commercial establishments
- Arts and crafts studios
- Banks and other financial institutions
- Clubs
- Drug stores
- Hairdressing establishments
- Home-based businesses, minor
- Houses of worship
- Laundromats
- Offices and office buildings
- Personal service establishments
- Photographic studios
- Print shops
- Professional offices
- Repair shops, general
- Repair shops, personal service
- Restaurants
- Restaurants, take-out
- Retail Businesses, small
- Theaters
- Thrift Store

(3) Accessory Uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the B-1 Village Business District, and which are located on the same lot as the principal building or use, shall be allowed.

(4) Special Permitted Uses

The following uses may be permitted in the B-1 Village Business District upon obtaining a Special Use Permit from the Planning Board:

- Animal hospitals
- Bars and Taverns
- Brew pubs
- Charitable Institution
- Commercial school
- Day care facilities, child and adult
- Food processing establishments
- Funeral homes
- Home-based businesses, major
- Hospice
- Hotels, Motels and Inns
- Manufacturing, restricted
- Medical clinics
- Nursery schools
- Parking lots (as the principal use of the lot)
- Parking structures (as the principal use of the lot)
- Public parks
- Public and private elementary and secondary schools
- Public use
- Public utility facilities
- Warehouses
- Wholesale businesses

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

(E) B-2 Commercial-Residential District**(1) Purpose**

The purpose of the B-2 Commercial-Residential District is to permit and promote opportunities for a diversity of retail businesses and personal services that meet the needs of the residents of the Village of Allegany, surrounding areas, and visitors. Another purpose of this district is to provide a mix of land uses, so that this area of the Village will be an exciting area in which to work, shop or live. Therefore, residential development, such as apartments over commercial establishments and multiple family dwellings are encouraged. Development in this district shall be consistent with the historic character of this downtown village center. Emphasis shall be placed on pedestrian-oriented, rather than automobile-dependent, development.

(2) Permitted uses

The following uses are allowed in the B-2 Commercial-Residential District:

- Apartments over first floor commercial establishments
- Arts and crafts studios
- Banks and other financial institutions
- Clubs
- Drug stores
- Hairdressing establishments
- Home-based businesses, minor
- Houses of worship
- Laundromats
- Offices and office buildings
- Personal service establishments
- Photographic studios
- Print shops
- Professional offices
- Rectories
- Repair shops, general
- Repair shops, personal service
- Restaurants
- Restaurants, take-out
- Retail Businesses, small
- Single family dwellings
- Two-family dwellings
- Theaters
- Thrift Store

(3) Accessory uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the B-2 Commercial-Residential District, and which are located on the same lot as the principal building or use, shall be allowed, including private garages, as an accessory use to a single-family or two-family dwelling, which do not exceed 676 square feet in gross floor area on the ground floor.

(4) Special Permitted Uses

The following uses may be permitted in the B-2 Commercial-Residential District upon obtaining a Special Use Permit from the Planning Board:

- Accessory Apartments
- Animal hospitals
- Bars and Taverns
- Bed and Breakfast residence
- Brew pubs
- Charitable Institution
- Commercial school
- Day care facilities, child and adult
- Food processing establishments
- Funeral homes
- Home-based businesses, major
- Hospice
- Hotels, Motels and Inns
- Keeping of roomers or boarders in an owner-occupied dwelling, provided the occupancy of the dwelling does not exceed four (4) unrelated persons
- Manufacturing, restricted
- Medical clinics
- Multiple family dwellings
- Nursery schools
- Parking lots (as the principal use of the lot)
- Parking structures (as the principal use of the lot)
- Private garages, as an accessory use to a single-family or two-family dwelling, that exceed 676 square feet in gross floor area on the ground floor.
- Public parks
- Public and private elementary and secondary schools
- Public use
- Public utility facilities
- Warehouses
- Wholesale businesses

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

(F) B-3 General Business District**(1) Purpose**

The purpose of the B-3 General Business District is to permit and promote opportunities for a diversity of retail businesses and personal services that meet the needs of the residents of the Village of Allegany, surrounding areas, and visitors. An additional purpose of this district is to allow a mix of land use activities, including a variety of residential development. This district may contain uses that are automobile dependent.

(2) Permitted Uses

The following uses are allowed in the B-3 General Business District:

- Apartments over first floor commercial establishments
- Arts and craft studios
- Banks and other financial institutions
- Clubs
- Day care facilities, child and adult
- Drug Stores
- Hairdressing establishments
- Home-based businesses, minor
- Houses of worship
- Laundromats
- Offices and office buildings
- Personal service establishments
- Photographic studio
- Print shop
- Professional offices
- Nursery schools
- Rectories
- Repair shops, general
- Repair shops, personal service
- Restaurants
- Restaurants, take-out
- Retail businesses, small
- Retail businesses, large
- Single family dwellings
- Two-family dwellings
- Theaters
- Thrift Store

(3) Accessory Uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the B-3 General Business District, and which are located on the same lot as the principal building or use, shall be allowed, including private garages, as an accessory use to a single-family or two-family dwelling, which do not exceed 676 square feet in gross floor area on the ground floor.

(4) Special Permitted Uses

The following uses may be permitted in the B-3 General Business District upon obtaining a Special Use Permit from the Planning Board:

- Accessory Apartments
- Animal hospitals
- Automobile repair shops
- Automobile sales establishments
- Bars and taverns
- Bed and Breakfast residence
- Brew pub
- Car wash
- Charitable Institution
- Commercial recreation, indoor
- Commercial recreation, outdoor
- Commercial school
- Drive-through windows
- Food processing establishments
- Funeral homes
- Gasoline stations
- Gasoline stations with mini-marts
- Home-based businesses, major
- Hospice
- Hotels, motels and inns
- Keeping of roomers or boarders in an owner-occupied dwelling, provided the occupancy of the dwelling does not exceed four (4) unrelated persons
- Lumber and building material, storage and sales
- Manufacturing, restricted
- Medical clinics
- Multiple family dwellings
- Parking lots (as the principal use of the lot)
- Parking structures (as the principal use of the lot)
- Private garages that exceed 676 square feet in gross floor area on the ground floor
- Public parks
- Public and private elementary and secondary schools
- Public uses

Public utility facilities
Restaurants, drive-in
Warehouses
Wholesale businesses

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

(G) I-1 Industrial District

(1) Purpose

The purpose of the I-1 Industrial District is to provide an opportunity for low-intensity industrial and commercial development in the Village of Allegany, which will provide employment opportunities for residents, will help to maintain the village's tax base, but which will not adversely affect the health, safety and welfare of the residents of the village or surrounding areas.

(2) Permitted Uses

The following uses are allowed in the I-1 Industrial District:

Arts and crafts studio
Banks and other financial institutions
Feed and grain storage facility
Feed store
Hairdressing establishment
Home-based business, minor
Houses of worship
Laundromats
Offices and office buildings
Personal service establishments
Photographic studio
Print shop
Professional offices
Repair shops, general
Repair shops, personal service
Retail businesses, small
Thrift Store
Warehouses
Wholesale businesses

(3) Accessory Uses

Accessory uses and structures that are customarily incidental and subordinate to the principal buildings or uses that are permitted in the I-1 Industrial District, and which are located on the same lot as the principal building or use, shall be allowed.

(4) Special Permitted Uses

The following uses may be permitted in the I-1 Industrial District upon obtaining a Special Use Permit from the Planning Board:

- Animal hospitals
- Adult entertainment establishment
- Automobile body shops
- Automobile repair shops
- Automobile sales establishments
- Bars and Taverns
- Car wash
- Charitable Institution
- Clubs
- College
- Commercial recreation, indoor
- Commercial recreation, outdoor
- Commercial school
- Contractor's yard
- Distribution centers
- Food processing establishments
- Funeral homes
- Home-based business, major
- Hospice
- Lumber and building material, storage and sales
- Manufacturing, medium
- Manufacturing, restricted
- Medical clinics
- Parking lots (as the principal use of the lot)
- Parking structures (as the principal use of the lot)
- Public utility facilities
- Recycling center
- Research and development facilities
- Retail business, large
- Telecommunications facilities

(5) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law.

(H) F-O Floodplain Overlay District**(1) Purpose**

The purpose of the Floodplain Overlay District is to protect the health, safety and welfare of the residents of the Village of Allegany and to minimize the public and private losses from hazards due to periodic or intermittent flooding. These purposes shall include the protection of persons and property, the preservation of water quality and the minimizing of expenditures for relief, insurance and flood control projects. This does not imply that areas outside of the floodplain area or uses permitted within the floodplain area will be free from flooding or flood damage.

(2) Applicability

The Floodplain Overlay District shall include all areas identified as areas of special flood hazard within the Village of Allegany by the Federal Emergency Management Agency (FEMA). The areas of special flood hazard are identified and defined on the following documents prepared by FEMA:

- (a) Flood Insurance Rate Map No. 360967 0001 C, whose effective date is December 17, 1991.
- (b) A scientific and engineering report entitled "Flood Insurance Study, Village of Allegany, New York, Cattaraugus County" dated December 17, 1991.

The above documents are hereby adopted and declared to be a part of this Local Law. The Flood Insurance Study and map are on file at the Village Hall, Village of Allegany.

(3) Permitted, Accessory and Special Permitted Uses

Permitted uses, special permitted uses and permitted accessory uses shall be those designated in the underlying zoning district. However, such uses shall be subject to the special restrictions contained in Local Law 1-1992, entitled "A Local Law for Flood Damage Prevention," and any amendments thereto which may from time to time be enacted.

(4) Dimensional Regulations

All permitted uses, special permitted uses, and accessory uses shall conform to the dimensional regulations contained in Section 7.2 of this local zoning law for the

underlying zoning district. In addition, any development shall conform to any special dimensional regulations contained in Local Law 1-1992, entitled "A Local Law for Flood Damage Prevention," and any amendments thereto which may from time to time be enacted.

(H) Table of Permitted Uses

Table 7.1, Table of Permitted Uses, which is located on the following pages, summarizes all permitted and special permitted uses for each zoning district.

Table 7.1 Table of Permitted Uses

TYPE OF USE	USE DISTRICT						
	R-1	R-2	R-3	B-1	B-2	B-3	I-1
RESIDENTIAL	R-1	R-2	R-3	B-1	B-2	B-3	I-1
Single Family dwelling	P	P	P	N	P	P	N
Two-Family dwelling ¹	N	P	P	N	P	P	N
Multiple family dwelling	N	N	SP	N	SP	SP	N
Apartments over first floor							
commercial establishments	N	N	N	P	P	P	N
Keeping of boarders	SP	SP	SP	N	SP	SP	N
Rectories	SP	P	P	N	P	P	N
Convents and monasteries	N	N	SP	N	N	N	N
Accessory Apartments ²	N	SP	SP	N	SP	SP	N
COMMERCIAL	R-1	R-2	R-3	B-1	B-2	B-3	I-1
Animal hospitals	N	N	N	SP	SP	SP	SP
Adult entertainment establishment	N	N	N	N	N	N	SP
Arts and crafts studio	N	N	N	P	P	P	P
Automobile body shops	N	N	N	N	N	N	SP
Automobile repair shops	N	N	N	N	N	SP	SP
Automobile sales establishments	N	N	N	N	N	SP	SP
Banks and other							
Financial institutions	N	N	N	P	P	P	P
Bars and Taverns	N	N	N	SP	SP	SP	SP
Bed and breakfast residence	N	SP	SP	N	SP	SP	N
Brew pub	N	N	N	SP	SP	SP	N
Car wash	N	N	N	N	N	SP	SP
Commercial recreation, indoor	N	N	N	N	N	SP	SP
Commercial recreation, outdoor	N	N	N	N	N	SP	SP
Commercial school	N	N	N	SP	SP	SP	SP
Drive-through windows	N	N	N	N	N	SP	N
Drug stores	N	N	N	P	P	P	N

COMMERCIAL (con't)	R-1	R-2	R-3	B-1	B-2	B-3	I-1
Feed Store	N	N	N	N	N	N	P
Funeral homes	N	SP	SP	SP	SP	SP	SP
Gasoline stations	N	N	N	N	N	SP	N
Gasoline stations with mini-mart	N	N	N	N	N	SP	N
Hairdressing establishments	N	N	N	P	P	P	P
Home-based businesses, major	SP	SP	SP	SP	SP	SP	SP
Home-based businesses, minor	P	P	P	P	P	P	P
Hotels, motels, and inns	N	N	N	SP	SP	SP	N
Laundromats	N	N	N	P	P	P	P
Lumber and building materials, storage & sales	N	N	N	N	N	SP	SP
Medical clinics	N	N	N	SP	SP	SP	SP
Offices and office buildings	N	N	N	P	P	P	P
Personal service establishment	N	N	N	P	P	P	P
Photographic studios	N	N	N	P	P	P	P
Print shops	N	N	N	P	P	P	P
Professional offices	N	SP	SP	P	P	P	P
Repair shops, general	N	N	N	P	P	P	P
Repair shops, personal service	N	N	N	P	P	P	P
Restaurants	N	N	N	P	P	P	N
Restaurants, drive-in	N	N	N	N	N	SP	N
Restaurants, take-out	N	N	N	P	P	P	N
Retail businesses, small	N	N	N	P	P	P	P
Retail businesses, large	N	N	N	N	N	P	SP
Theaters	N	N	N	P	P	P	N
Thrift Store	N	SP	SP	P	P	P	P
Warehouses	N	N	N	SP	SP	SP	P
Wholesale businesses	N	N	N	SP	SP	SP	P

INDUSTRIAL	R-1	R-2	R-3	B-1	B-2	B-3	I-1
Contractor's yard	N	N	N	N	N	N	SP
Distribution center	N	N	N	N	N	N	SP
Feed and grain storage facility	N	N	N	N	N	N	P
Food processing establishments	N	N	N	SP	SP	SP	SP
Manufacturing, medium	N	N	N	N	N	N	SP
Manufacturing, Restricted	N	N	N	SP	SP	SP	SP
Research & Development Facilities	N	N	N	N	N	N	SP
Recycling Center	N	N	N	N	N	N	SP

GENERAL	R-1	R-2	R-3	B-1	B-2	B-3	I-1
Accessory uses on the same lot as the principal use	P	P	P	P	P	P	P
Cemetery	N	N	SP	N	N	N	N
Charitable Institution	N	SP	SP	SP	SP	SP	SP
Clubs	N	N	N	P	P	P	SP
College	N	N	N	N	N	N	SP
Day care facilities, child and adult	N	SP	SP	SP	SP	P	N
Hospice	N	N	SP	SP	SP	SP	SP
Houses of worship	SP	P	P	P	P	P	P
Nursery schools	N	SP	SP	SP	SP	P	N
Parking lots ³	N	N	N	SP	SP	SP	SP
Parking structures ³	N	N	N	SP	SP	SP	SP
Public parks	SP	SP	SP	SP	SP	SP	N
Public and private elementary and secondary schools	SP	SP	SP	SP	SP	SP	N
Public use	SP	SP	SP	SP	SP	SP	N
Public utility facility	SP	SP	SP	SP	SP	SP	SP
Telecommunication facilities	N	N	N	N	N	N	SP

¹ Provided that the lot meets the minimum lot size, lot frontage, lot depth and other requirements of this law. See sections 7.1(B) and 7.1(C).

² Provided that the lot meets the minimum lot size, lot frontage, lot depth and other requirements of this law. See Section 9.17.

³ Refers to parking lots and structures as the principal use of a lot. Parking lots and structures that are associated with a principal use will be considered to be an accessory use to the principal permitted use.

Key to Abbreviations:

- P Permitted, if use meets all requirements of this zoning law
SP Permitted if Special Use Permit is granted by the Planning Board
N Not permitted

Zoning Districts:

- R-1 Single Family Residential District
R-2 Two-family Residential District
R-3 General Residence District
B-1 Village Business District
B-2 Commercial-Residential District
B-3 General Business District
I-1 Industrial District

Table 7.2 Table of Dimensional Regulations

Zoning District	Minimum Lot Size ¹ (square feet)	Minimum Frontage (feet)	Minimum Lot Depth (feet)	Minimum Setback Requirements (feet) ²				Maximum Height (feet) ³		Minimum Open Area ⁴
				Front	Side (each)	Rear		Principal Structure	Accessory Structure (all uses)	
						Principal	Accessory			
R-1	9,000	75		30	12	30	8	35	Sloping roof 15 Flat roof 12	40%
R-2									Sloping roof 20 Flat Roof 15	30%
Single Family Dwellings	6,000	50	100	25	5	25	8	40		
All other uses	8,000	70	110	25	5	25	8	40		
R-3									Sloping roof 20 Flat roof 15	30%
Single Family Dwellings	5,000	50	100	20	5	15	8	40		
All other uses	8,000	70	110	25	5	25	8	40		
B-1 ⁵	4,000	40		0	0	0	0	40	Sloping roof 20 Flat roof 15	None ⁵
B-2 ⁵	4,000	40		0	0	0	0	40	Sloping roof 20 Flat roof 15	None ⁵
B-3	8,000	70		25	10	25	10	40	Sloping roof 20 Flat roof 15	20%
I-1	15,000	75		30	20	30	10	40	Sloping roof 20 Flat roof 15	20%

Notes:

¹ Minimum lot size shall be based on updated/current instrument survey.

² See Section 7.2(C)

³ See Section 7.2(B). Also note that the NYS Building Code requirements may require a lower height.

⁴ See Section 7.2(D).

⁵ No minimum open area or setback requirements are specified in order to allow future development in the B-1 district the flexibility to be compatible with the historic development patterns. However, the Planning Board may require minimum open areas or minimum setbacks on a case-by-case basis during site plan review.

Districts:

R-1 Single Family Residential District

R-2 Two-family Residential District

R-3 General Residence District

B-1 Village Business District

B-2 Commercial-Residential District

B-3 General Business District

I-1 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 frontage, minimum lot depth, minimum setback requirements, maximum building height and minimum open area requirements for each land use district. This table is hereby declared to be an integral part of this zoning 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, silos, grain elevators, antennas on private residences, or any appurtenances usually required to be placed above the roof level and not intended for human occupancy. Chimneys may exceed the height regulations to the extent necessary to comply with building code requirements.

(C) Required Yard Setbacks to be Open

Where setbacks are required in this law, the yard area within the setbacks 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 allowed in these regulations.

(D) Minimum Open Area

- (1) The minimum open area shall be that area of a lot that is unoccupied by buildings, structures, parking lots, and/or other improvements. The minimum open area shall include the required front, rear and side yard setbacks, excluding those areas of the setbacks that are occupied by structures allowed under this local law. The minimum open area may contain the following structures and uses:
 - (a) outdoor swimming pools, whether in-ground or above-ground.
 - (b) driveways that serve a permitted garage or that serve three or fewer parking spaces
 - (c) unenclosed decks, porches, patios, terraces, and steps.
- (2) The minimum open area shall not include:
 - (a) public or private rights-of-way for streets or highways
 - (b) roofs
 - (c) parking lots, parking structures or private garages
 - (d) Any areas of a lot (except for the driveways specified in Section 7.2(D)(1)(b)), whether paved or unpaved, that are routinely used for vehicular parking and/or storage.

(E) Corner Lots

Whenever a side yard is adjacent to a street, the property owner, when applying for a building permit, shall specify which side is to be considered the front yard and which side is to be considered the side yard. The standards for the front and side yards shall then apply to the lot lines so designated.

(F) Accessory Buildings

- (1) No accessory building may be located in a required front yard setback or a required side yard setback.
- (2) Detached private garages shall be located such that no part of the garage shall be closer to the front lot line than the front wall of the primary building.
- (3) Notwithstanding any other provision of this law, clothesline poles, non-illuminated flag poles, garden trellises, fences and retaining walls shall be exempt from any setback requirements.
- (4) Notwithstanding any other provision of this law, a shed that is 140 square feet or less in floor area and that is used for the storage of garden and lawn tools, shovels, and similar equipment, may be located anywhere on a lot, provided that such shed is not within 3 ½ feet of any side or rear property line, and provided that such shed is not located between the front property line and the front wall of the primary building. Children's play structures may be located anywhere on a lot, provided that the play structure is not within 3 ½ feet of any side or rear property line.

(G) Visual Clearance at Intersections and Driveways

- (1) On any corner lot, no fence, wall, hedge or other structure or planting, which interferes with visibility from motor vehicles, shall be permitted within the sight triangle. The sight triangle is the triangular area formed by the edge of the paved road or curblin and a line drawn between two points along such paved road or curblin, each such point being 15 feet distant from the intersection. The measurement will be taken from the curblin, or from the edge of the paved roadway, in cases where there is no curb. (See Illustration VII-1).
- (2) On any lot where a private driveway enters a street, no obstruction to visibility from motor vehicles, which is between three (3) feet above ground level and ten (10) feet above ground level, shall be located within the triangular area formed by the edge of the sidewalk (or edge of paved road or curblin, in cases where there is not sidewalk) the private driveway line and a line connecting them, beginning ten (10) feet from their intersection. In addition, the driveway itself shall be kept free of obstructions to visibility to a depth of 10 feet from the right-of-way line. (See Illustration VII-2).

Illustration VII-1

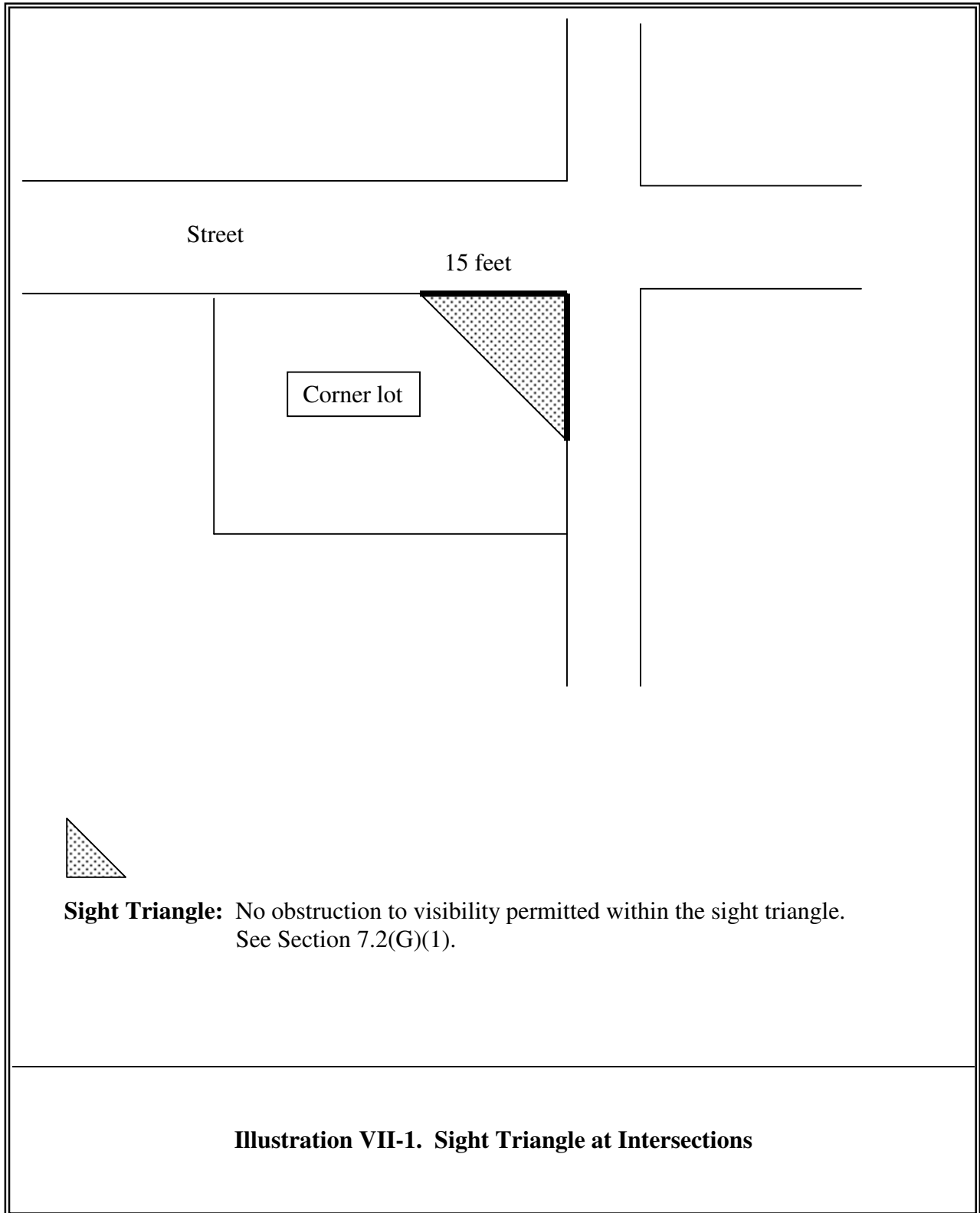
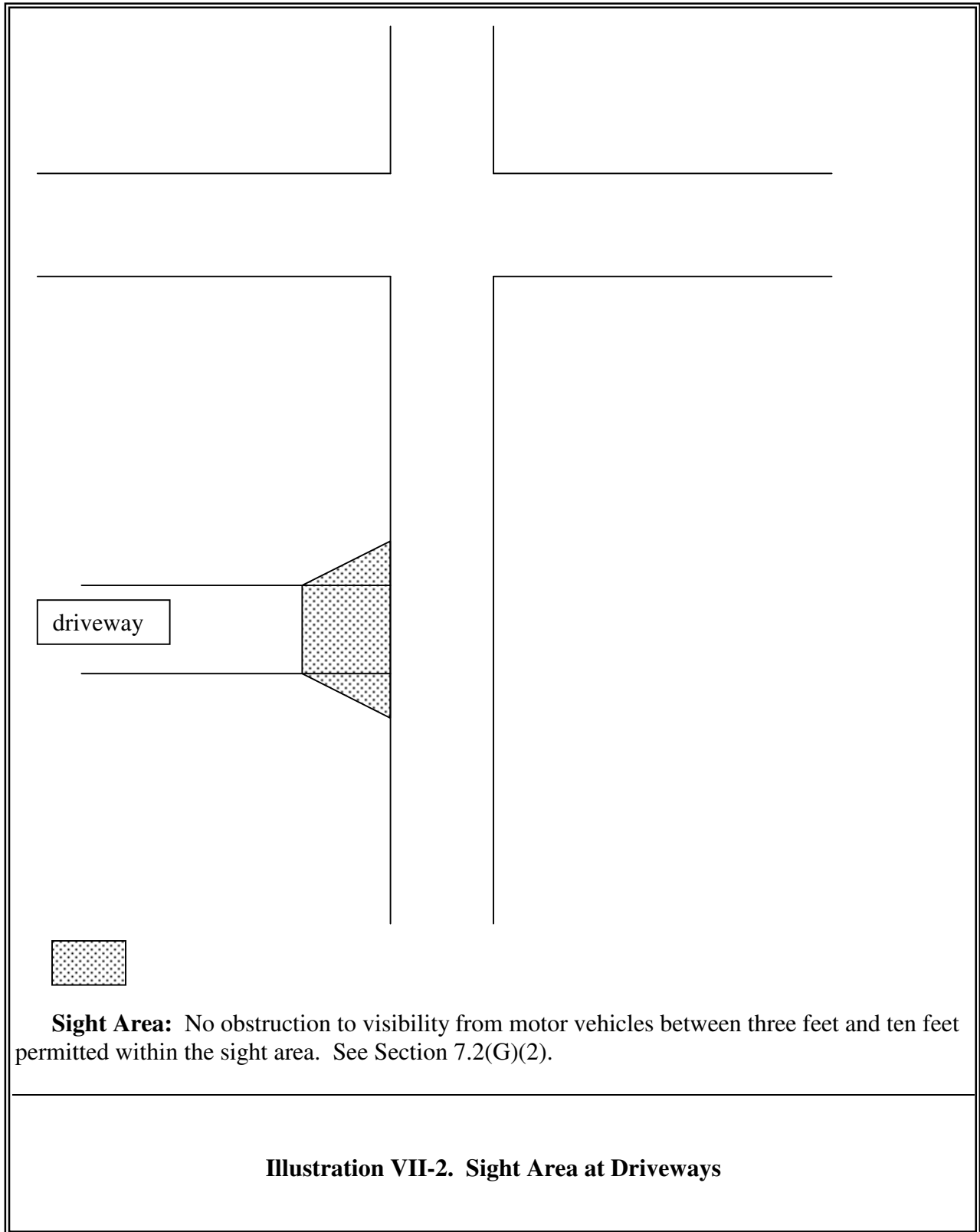


Illustration VII-2



(H) Principal Structures

- (1) In all districts where single family dwellings are permitted, a lot may be developed for such use in accordance with the requirements of this law, provided that there shall be no more than one single family 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.
- (2) Other than a single family dwelling, more than one structure housing a principal permitted or special permitted use may be allowed on a single lot, provided that the yard and other requirements of this local zoning law shall be met for each structure, as if they were located on individual lots. In addition, mixed use of permitted uses may be allowed within one structure, such as retail and office uses.

(I) Exceptions to Residential Front Yard Setback Requirements

When a single- or two-family dwelling is proposed to be located on a street where the existing homes have front yard setbacks that are less than that required for the zoning district in which they are located, the minimum front yard setback for the new residence shall be calculated by taking the average of the front yards of the five houses to the right and the five houses to the left of the lot on which the new residence will be located. If the block on which the new dwelling is to be located has fewer than ten houses, then the average of the front yard setbacks for the existing houses on that block shall be used to calculate the minimum front yard setback. The purpose of this exception is to promote the continuation of traditional building patterns, which are important to the character of the Village.

(J) Private Swimming Pools

Swimming pools, whether above ground or in-ground, are accessory structures, and as such shall comply with all the regulations pertaining to accessory structures in this zoning law. Swimming pools shall require zoning and building permits and shall comply with all building, plumbing and electrical codes.

(K) Minimum Floor Area

All single-family homes, including mobile homes and manufactured homes, shall contain a minimum of 1,000 square feet of interior gross floor area. The total floor area of all floors of a multi-story residence may be used to meet the minimum requirement.

(L) Projections into Required Setbacks

The following encroachments into required front, side and rear yard setbacks are permitted:

- (1) Eaves, cornices, cantilevered roofs, or bay windows may project three feet into any required setback.
- (2) A chimney, attached to the wall of a building, may project three feet into any required setback, provided that the chimney is not wider than eight feet.

ARTICLE VIII

NON-CONFORMING BUILDINGS, STRUCTURES AND USES

Section 8.1 Continuation of Use

Except as otherwise provided herein, any lawfully established use of a building, structure or land, or part thereof, 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 building, structure or land, or part thereof, occupied by, or being used as, 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 six consecutive months, or whenever there is evidence of 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 further use of the building or structure, or part thereof, shall be in conformity with the regulations of the district in which it is located.
- (C) Where no enclosed building is involved, discontinuance of a non-conforming use for a period of six 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 non-conforming use of a more restricted classification, as listed in Article VII of this local zoning law, and when so changed shall not thereafter be changed to a less restricted classification.

Section 8.4 Extension

A building or structure, which is non-conforming with respect to height, minimum setbacks, or minimum area, shall not be enlarged or altered in such manner as to increase any such non-conformity. A non-conforming use of land shall not be enlarged or extended to additional land. A building or structure, which is non-conforming with respect to use, shall not be enlarged or extended.

Section 8.5 Maintenance and Alterations

Normal maintenance of a non-conforming building or structure 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 market value of the building or structure, unless changed to a conforming use.

Section 8.6 Restoration

- (A) No non-conforming building or structure, which has been damaged by fire, flood or other causes to the extent of more than fifty (50) percent of its market value, shall be repaired or rebuilt, except in conformity with the regulations of this local law.
- (B) An application for a building permit to repair, rebuild or restore any non-conforming building or structure, which was damaged to the extent of fifty percent or less, shall be filed within six months of the date of such damage. If the repairing, rebuilding or restoration is not an exact replica (in terms of the height and footprint) of what was destroyed, and if a non-conformity shall still exist, application shall be made to the Zoning Board of Appeals for a variance.

Section 8.7 Terms Defined

As used in this Article, the terms "vacancy," "abandonment" and "discontinuance" shall all have the same meaning. Vacancy, abandonment and discontinuance, when used in this Article, shall rebuttably be presumed to occur in any building or structure when such building or structure has shown no visible signs of human habitation by owners or tenants for the period specified above. Vacancy, abandonment and discontinuance of a use on a lot that does not contain a structure shall rebuttably be presumed to occur if the lot has shown no visible signs of use as the non-conforming use for the period specified above.

In order to rebut the presumption of vacancy, abandonment and/or discontinuance, the property owner may present one or more of the following types of documentation:

- (A) Bills from utilities, such as telephone, water, electricity, gas, which indicate the dates of service.
- (B) Evidence that the personal property of the owner or occupant of a residence has remained in the building while the owner or occupant was absent for vacation, hospitalization, or other purpose.
- (C) If rental property, copies of the cancelled checks for the period in question, along with the signed lease agreement.

- (D) If a commercial property, business licenses such as liquor licenses, showing dates of use.
- (E) Notarized statements from neighbors who have observed the non-conforming use over the required time period.

Nothing in this section shall preclude a court of competent jurisdiction from finding that the use of a non-conforming building, structure, or lot is vacant, abandoned or discontinued under any other legally acceptable concept of vacancy, abandonment and/or discontinuance.

ARTICLE IX SUPPLEMENTARY REGULATIONS

Section 9.1 Application

In addition to all other requirements set forth in this local 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 Requirements

No land or building or structure 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 within the Village.
- (E) **Smoke.** Smoke that exceeds a density or opacity of Number 1 on the standard Ringlemann Chart as issued by the U.S. Bureau of Mines shall not be emitted for longer than three minutes, except when building a new fire, blowing tubes or breakdown; under these circumstances an emission that does not exceed a density or opacity of Ringlemann Number 3 is permissible for a period not to exceed three minutes in any thirty minute period.
- (F) **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.

- (G) **Glare.** No direct or reflected glare from any industrial or commercial establishment shall be visible from any public thoroughfare or from neighboring properties.
- (H) **Vibration.** No vibration shall be permitted which is discernible without instruments on any adjoining property.
- (I) **Noise.** Noise levels shall comply with the Village of Allegany Noise Law.

Section 9.3 Manufactured Homes or Mobile Homes on Individual Lots

A manufactured home or mobile home shall be permitted to locate in the Village of Allegany in any zoning district in which single-family homes are allowed, provided the manufactured home or mobile home meets all of the provisions of this local law, has a valid HUD insignia, and complies with all of the following conditions:

- (A) The manufactured home/mobile home shall be the principal use on the lot. The manufactured home/mobile home shall conform to all setbacks and other dimensional requirements of the zoning district in which it is located.
- (B) The manufactured home/mobile home shall contain a minimum floor area of 1,000 square feet, excluding any garage or carport. The manufactured home/mobile home shall have a minimum width of twenty (20) feet, measured at the narrowest part of the building, excluding any garage or carport from the width.
- (C) The manufactured home/mobile home shall connect to the Village's water supply system and sewage disposal system.
- (D) The manufactured home/mobile home shall be installed on a permanent 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) All manufactured homes/mobile homes, which are not installed on a permanent, enclosed foundation that is set below the frost line, shall be skirted. Skirting shall enclose the space between the bottom of the structure and the ground. Allowable skirting materials are masonry-type materials, including cement, concrete, brick, and natural stone, and similar materials that are approved in the New York State Building Code as foundation materials. Metal and plastic materials shall not be allowed as skirting. Skirting shall be installed prior to the issuance of an occupancy permit.
- (G) The manufactured home/mobile home shall have a roof that 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) No more than one (1) manufactured home/mobile home may be located on one lot.

Section 9.4 Recreation Vehicles

- (A) Recreation vehicles may be located and used in any residential district in the Village for a period of up to 30 days, subject to obtaining a permit from the Code Enforcement Officer. Said permit may be renewed by the CEO for a total consecutive period of no more than 90 days. The recreation vehicle may not be located in the required front yard setback or in the front of a dwelling.
- (B) Individual recreation vehicles owned by residents of the Village may be stored on the property of the owner for an unlimited period, provided that such recreation vehicle is not used. Such storage must be off-street, and the vehicle may not be stored in the required front yard setback or in front of a dwelling.
- (C) For purposes of this section, the term "recreation vehicle" also includes boats.

Section 9.5 Sanitation

The dumping of garbage, trash or rubbish shall only be permitted in locations and under conditions approved by the Village Board and the Cattaraugus County Department of Health.

Section 9.6 Signs

(A) Purpose

The purpose of these sign regulations is to encourage the effective use of signs as a means of communication in the Village of Allegany, to maintain and enhance the aesthetic environment, to maintain and enhance the Village'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 Code Enforcement Officer (CEO).

Application for a sign permit shall be on forms available from the Code Enforcement Officer. The application shall include a drawing, clearly indicating all graphics, lettering, dimensions, colors, materials and design of the sign, as well as the location of the sign, and lighting (if any). The applicant shall submit two copies of all application materials.

The Code Enforcement Officer shall act on the application for sign permit within 30 days of receipt of a complete application. If the CEO is uncertain whether or not the proposed sign

meets all the criteria contained in this local law, the CEO may refer the application for a sign permit to the Village Board of Trustees. This referral shall occur within 30 days of the date of receipt of the complete application. The Village Board of Trustees shall act on the referral within 30 days from the date of referral.

Signs that are specifically approved as part of Site Plan Review granted by the Planning Board shall require sign permits, but they shall be assumed to meet the criteria established herein. During the comprehensive site plan review, the Planning Board shall use the criteria in this Section to evaluate the proposed signs.

(C) Exempt Signs

The following signs shall be allowed in all districts without first obtaining a sign permit, provided they meet the general requirements, standards, and regulations of this local law.

- (1) Any sign posted by duly constituted public authorities in the performance of their public duties.
- (2) Public road and highway signs.
- (3) Real estate signs, not exceeding six square feet in area and advertising the sale, rental or lease of the premises on which the sign is located. Only one such sign shall be permitted for each street frontage and it shall not be illuminated.
- (4) A home-based business may install one sign as permitted in Section 9.10.
- (5) A Bed and Breakfast Residence may install one sign as permitted in Section 9.9.
- (6) 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 be freestanding. Such address sign shall not be permitted if the premises contains a sign for a home-based business or for a bed and breakfast residence.
- (7) A house of worship, school, community building or other public building shall be permitted one sign on the premises on which such building is located, provided that the area of such sign does not exceed 15 square feet, and such signs are set back a minimum of 15 feet from the right-of-way line. The sign may contain a bulletin board.
- (8) Temporary signs, such as signs for political candidates and yard sale signs, whether for commercial, political or private purposes, shall be permitted subject to the following conditions:
 - (a) No such sign shall exceed six (6) square feet in area.
 - (b) No such sign shall obstruct traffic or interfere with the line of sight of persons and vehicles using public streets.

- (c) Such sign shall not be in place for more than 30 days before the event which is being advertised, and shall be removed within 48 hours after the event being advertised is completed.
 - (d) Such signs shall not be located in the public right-of-way or on other public property.
- (9) For new construction or renovation, one sign, not exceeding 32 square feet in area, indicating the project name and the names of the architect, builders, contractor, bank, engineer, participating public and governmental agencies, and similar involved entities, may be erected for a period of 60 days prior to the commencement of construction, plus the construction period. Such sign shall be removed within 30 days of the completion of the construction project.
- (10) 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.
- (11) Historical markers, tablets, memorial signs, and plaques authorized by or erected by a governmental agency.
- (12) 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.
- (13) For a multiple-family building, one sign, not to exceed thirty-two (32) square feet in area, maybe used to indicate the name of the development. In addition, temporary "for rent" signs advertising the availability of apartments may be posted. Such "for rent" signs shall not exceed six square feet in area and shall conform to all other requirements for real estate signs, above.
- (14) 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 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 twenty-four (24) square feet in area.

(D) Community Event Signs

Upon approval by the Village Board, temporary signs not exceeding 50 square feet, which announce an event of community interest, excluding political election signs, may be erected no more than thirty (30) days before the event and must be removed within 48 hours of the completion of the event.

(E) Prohibited Signs

- (1) All signs not expressly permitted under this local law or expressly exempt from regulation herein 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.
- (5) No sign shall be a hazard or a threat to the health, safety or welfare of the residents of the Village of Allegany or to any visitors to the Village.
- (6) For public safety reasons, no exterior sign shall contain neon lighting.

(F) 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 public light standard, traffic control structure, utility pole, or tree.
- (2) No sign, except signs erected by a governmental entity for a public purpose, shall be placed on public property.
- (3) All approved site plans shall include a coordinated plan for the location and size of all signs for the entire project area.
- (4) No sign shall be placed in or project into any street right-of-way.
- (5) 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.

- (6) 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.
- (7) The Code Enforcement Officer may deny a sign permit for any sign considered to be offensive, in the judgement of the CEO.
- (8) All signs should be architecturally integrated with their surroundings in terms of size, shape, color, texture, and lighting, so that they are complementary to the overall design of the building. Signs should reflect the character of the building and its use, especially in the B-1 and B-2 Zoning Districts.
- (9) Signs should not cover or obscure the primary architectural features of the building.
- (10) An overall design plan that integrates all signs on one structure, or signs for multiple uses within the same structure or plaza, is encouraged.

(G) Illumination Standards

- (1) No sign shall contain strobe lights or black lights. No sign shall be illuminated by strobe lights or black lights
- (2) No sign shall be designed or illuminated in such a way that it affects traffic safety.
- (3) No sign shall be designed or illuminated in such a way that it shines upon, glares or otherwise is a nuisance and/or hazard.
- (4) Any lighted sign that may, in the judgement of the CEO, disturb or be annoying in any way may be denied a sign permit.

(H) Standards for Specific Types of Signs

(1) A-frame signs (Sandwich board signs)

- (a) An A-frame sign is a type of portable sign (see below) which may be used on a daily basis to advertise a commercial establishment. The message on the A-frame sign may be permanent or it may change daily to advertise special events such as sales in retail stores or special menus for restaurants.
- (b) An A-frame sign shall be placed such that entrance to and egress from the commercial establishment is not hindered. The sign shall be placed such that it is in front of the establishment that it advertises, and does not interfere with adjacent buildings.
- (c) The sign shall be placed such that it does not obstruct traffic or sight distance at an intersection.
- (d) The sign shall not be placed on the sidewalk or subway.
- (e) Sign area is limited to six (6) square feet per side.

- (f) The maximum size for an A-frame sign is five (5) feet in height and three (3) feet in width. However, the display area shall not exceed 6 square feet per side (see above).
- (g) Signs shall be displayed only during hours that the business is open.
- (h) The sign shall be made of durable materials, and shall be placed such that it is in a fixed location throughout the entire time it is displayed.
- (i) The sign permit for an A-frame sign shall be valid for one year and may be renewed annually.

(2) 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 and/or sides of the awning.
- (c) A minimum of eight (8) feet between the bottom of the sign and the ground level (sidewalk) shall be allowed for pedestrian clearance.
- (d) The sign area of an awning sign shall be determined by drawing an imaginary rectangle that encompasses the entire lettering, graphics and images. The area within this rectangle is the sign area.

(3) Banner signs

- (a) Banner signs shall be mounted perpendicular to the building façade at both the top and bottom of the banner.
- (b) Freestanding banner signs are not permitted.
- (c) A minimum of eight (8) feet between the bottom of the sign and the ground level (sidewalk) shall be allowed for pedestrian clearance.

(4) Changeable copy signs

- (a) A changeable copy sign may be incorporated into a sign for a commercial, industrial or other establishment.
- (b) The area of a changeable copy sign shall be included into calculation of the allowable sign area for a particular establishment.
- (c) Changeable copy signs shall be permanently mounted to a building wall or other permanent structural support. A changeable copy sign shall not be a portable sign.
- (d) No more than one changeable copy sign may be allowed per establishment.
- (e) Changeable copy signs may only be allowed:
 - (i) In conjunction with facilities used exclusively for the presentation of theatrical, cultural, or religious events.
 - (ii) To advertise products, services and prices in conjunction with a retail business, such as a restaurant or gas station.

(5) Freestanding Signs

- (a) Freestanding signs may have only two faces.
- (b) The area of a freestanding sign shall not exceed forty (40) square feet on each side.
- (c) No part of a freestanding sign shall project into or over any driveway, sidewalk, 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 twenty (20) 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.

(6) Projecting Signs

- (a) No part of a projecting sign shall extend into vehicular traffic areas.
- (b) Projecting signs shall not extend above the bottom 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 to the top of the sign.
- (c) Projecting signs shall have a minimum clearance for pedestrians of eight (8) feet from the bottom of the sign to the ground.
- (d) Projecting signs shall have a maximum of two faces and shall have a maximum size of twenty (20) square feet per face.
- (e) For a building located at a street intersection, any projecting sign shall conform to the requirements of Section 7.2 (G) Visual Clearance of this local law.

(7) 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.
- (c) In no case shall any portable sign be in use for more than thirty (30) days.
- (d) In general a portable sign may not be placed in the right-of-way or on the sidewalk. An approved location for the sign shall be established at the time the sign permit is issued.
- (e) A portable sign may not exceed forty (40) square feet in sign area.
- (f) If illuminated, the sign shall conform to all requirements of NEC or NFPA 70-d.
- (g) No more than one portable sign per lot shall be permitted.
- (h) A portable sign shall be used only to advertise activities and events on the property on which the sign is located.

(8) 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 the street. In no case shall a wall sign exceed 100 square feet in area. Where a building fronts on more than one street, the sign area facing each street frontage shall be calculated separately.

(I) Specific Requirements for Zoning Districts**(1) Signs in B-1, Village Business District and B-2 Commercial-Residential District**

- (a) **Maximum sign area:** An establishment in the Village Business District (B-1) and in the Commercial-Residential District (B-2) shall have a total maximum allowable sign area for signs placed on the building wall which is based upon the building frontage. The allowable sign area shall not exceed 1.5 square feet for each lineal foot of building face parallel to a street, up to a maximum of 100 square feet in sign area.

If the establishment fronts on more than one street, the establishment may have signs on each frontage, and the allowable sign area shall be calculated separately for each frontage.

Where two or more establishments share one building, the total allowable sign area shall be divided among the occupants, based on the frontage width occupied by each establishment. In the event that the establishments are upstairs/downstairs in

the same building, the allowable sign area shall be calculated based on the amount of frontage each individual establishment occupies. In the case of establishments that occupy the front/back of a building, if the back of a building serves as the main entrance for an establishment, the allowable sign area for the front and rear occupants shall be calculated based on the "frontage" at the part of the building that each establishment occupies.

- (b) **Permitted sign types on the building wall:** An establishment may erect one or more wall signs, awning signs, banner signs and/or projecting signs, provided that the allowable sign area is not exceeded for each establishment. Establishments are encouraged to consolidate sign information and to keep the number of signs to the minimum necessary to advertise the establishment.
- (c) A business may also display either one changeable copy sign or one A-frame sign.
- (d) Because of the historic and pedestrian character of these districts, freestanding signs are not appropriate and are not permitted.

(2) Signs in B-3, General Business District

- (a) **Maximum sign area:** An establishment in the General Business District (B-3) shall have a total maximum allowable sign area for signs placed on the building wall which is based upon the building frontage. The allowable sign area shall not exceed 1.5 square feet for each lineal foot of building face parallel to a street, up to a maximum of 100 square feet in sign area.

If the establishment fronts on more than one street, the establishment may have signs on each frontage, and the allowable sign area shall be calculated separately for each frontage.

Where two or more establishments share one building, the total allowable sign area shall be divided among the occupants, based on the frontage width occupied by each establishment. In the event that the establishments are upstairs/downstairs in the same building, the allowable sign area shall be calculated based on the amount of frontage each individual establishment occupies. In the case of establishments that occupy the front/back of a building, if the back of a building serves as the main entrance for an establishment, the allowable sign area for the front and rear occupants shall be calculated based on the "frontage" at the part of the building that each establishment occupies.

- (b) **Permitted sign types on the building wall:** An establishment may erect one or more wall signs, awning signs, banner signs and/or projecting signs, provided that the allowable sign area is not exceeded for each establishment. Establishments are encouraged to consolidate sign information and to keep the number of signs to the minimum necessary to advertise the establishment.

- (c) In addition to signs on the building wall, one freestanding sign is permitted.
- (d) A business may also display either one changeable copy sign or one A-frame sign.

(3) Signs in the (I-1) Industrial District

- (a) **Maximum sign area:** An establishment in the Industrial District (I-1) shall have a total maximum allowable sign area for signs placed on the building wall which is based upon the building frontage. The allowable sign area shall not exceed 1.5 square feet for each lineal foot of building face parallel to a street lot line, up to a maximum of 100 square feet in sign area.

If the establishment fronts on more than one street, the establishment may have signs on each frontage, and the allowable sign area shall be calculated separately for each frontage.

Where two or more establishments share one building, the total allowable sign area shall be divided among the occupants, based on the frontage width occupied by each establishment. In the event that the establishments are upstairs/downstairs in the same building, the allowable sign area shall be calculated based on the amount of frontage each individual establishment occupies. In the case of establishments that occupy the front/back of a building, if the back of a building serves as the main entrance for an establishment, the allowable sign area for the front and rear occupants shall be calculated based on the "frontage" at the part of the building that each establishment occupies.

- (b) **Permitted sign types on the building wall:** An establishment may erect one or more wall signs, awning signs, banner signs and/or projecting signs, provided that the allowable sign area is not exceeded for each establishment. Establishments are encouraged to consolidate sign information and to keep the number of signs to the minimum necessary to advertise the establishment.
- (c) In addition to signs on the building wall, one freestanding sign is permitted.
- (d) An establishment may also display either one changeable copy sign or one A-frame sign.

(4) Business and Industrial Establishments in Residential Districts

In a residential district, a sign or signs may be erected, as approved by the Planning Board as part of the grant of special use permit. The maximum sign area shall not exceed the size that would be allowed if the structure were located in the B-1 Village Business District.

(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 owner of record. If the defect is not corrected within the time period specified in the notice, the Code Enforcement Officer may revoke the sign permit and/or pursue other enforcement actions.

(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 9.7 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, or when there is a change of use, off-street parking spaces for vehicles shall be provided in accordance with the following requirements. However, commercial or industrial uses in the B-1 Village Business District or the B-2 Commercial-Residential District shall be exempted from the off-street parking requirements. The purpose of this exemption for non-residential uses in the B-1 and B-2 Districts is to preserve the character of the historic commercial core of the Village, with its historic buildings built out to the sidewalk line and pedestrian orientation.

(B) Parking in Front Yard

Parking of motor vehicles in the required front yard setback, or in the front of the primary building on any parcel, shall not be allowed in any zoning district, unless the parking occurs in a parking lot which has received approval through a special use permit, variance or site plan review. However, this provision does not apply to single family or two family dwellings, provided the parking occurs in a paved driveway. Except for standard driveways, the front yards of single family or two family dwellings shall not be paved to accommodate parking. Parking on the lawn area in front of a single family or two family dwelling shall not be allowed.

(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 dwelling unit
Two-family Dwelling	2 spaces per dwelling 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/Boarding House	1 space per guest room, plus 1 space for every three employees
Bed and Breakfast Residence	1 space for every room let, plus 2 spaces for the single-family dwelling
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
Banks	1 space per 400 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
Gas station	1 space per employee on the maximum working shift. Required parking spaces or their maneuvering area shall not conflict with vehicles being fueled or awaiting fueling.
Gas station with mini-mart	Required number of spaces shall be calculated by combining the spaces required for a gas station with those required for a retail use.
Other Uses not specified	As may be determined by the Planning Board

(D) Calculation of Required Parking Spaces

- (1) In the case of a 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 shared use of parking areas or other modifications warrant a lesser number of off-street parking spaces.
- (2) Whenever a major fraction (more than one-half) of a space is required, a full space shall be provided.

(E) General Requirements for Off-Street Parking

- (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) A parking space shall be a minimum of 10 feet by 18 feet, exclusive of parking aisles and driveways, shall be a visibly designated and marked space, and shall be of usable shape and surface. For single-family and two-family dwellings, a driveway may be considered a suitable parking area, and the parking spaces do not need to be marked.

(F) Parking in the Front Yard

- (1) Commercial and Industrial Establishments and Multiple Family Dwellings

Parking of motor vehicles in the front yard or in the front of the primary building on any parcel, shall not be allowed, unless the parking occurs in a parking lot which has received approval, under the Village's Zoning Law, through a special use permit, variance or site plan review.

- (2) Single Family and Two Family Residential Premises

Parking of motor vehicles at single family or two family dwellings may be located in the front yard, provided the parking occurs in a driveway. For purposes of this local law, a driveway does not have to be paved or surfaced, provided that pools of water do not form; however, a driveway shall be clearly delineated. Driveways may include an attached turnaround area, such that a vehicle may be maneuvered so that the driver can egress from the lot without backing into traffic. The turnaround area shall be large enough to accommodate one, and only one, vehicle.

Except for driveways and an attached turnaround area, the front yards of single family or two family dwellings shall not be paved for parking. Parking on the lawn area, or any area outside of the driveway and/or turnaround area, in the front yard of a single family or two family dwelling shall not be allowed.

(G) Parking Lots

- (1) All parking lots shall meet the following requirements:
- (2) Adequate access shall be provided to all parking spaces. Where a lot does not abut onto a private or public street or access drive, a driveway of not less than 18 feet in width leading to the parking area shall be required.
- (3) Any lighting that illuminates off-street parking lots, 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.
- (4) If a parking lot 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 lot shall be set back a minimum of 6 feet from the residential lot line, and this setback shall be landscaped.
- (5) For parking lots 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 lot.
- (6) To the maximum extent feasible, parking lots shall be placed to the side or rear of the building they are designed to serve, not in the front. In the B-1 District, off-street parking areas and/or parking lots shall not be allowed in front of buildings.
- (7) All parking shall conform to the requirements of the Americans with Disabilities Act (ADA).

(H) Driveway Regulations

- (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) When feasible, 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) Driveways shall be clearly defined. Under no circumstances shall the entire frontage of a lot be used as a driveway. Areas outside of the driveway and paved parking areas shall be landscaped.
- (5) No more than two driveways entering on one street from a single commercial or industrial establishment shall be permitted. No more than one driveway accessing Route

417 shall be permitted, unless unique site conditions make this inappropriate. Corner lots on Route 417 shall take access from the adjacent local street, not Route 417, where feasible.

- (6) Shared driveways for abutting commercial and/ or industrial establishments shall be encouraged. Interconnected parking lots for adjacent commercial developments are encouraged. Cross-access may be provided at the rear of the parking lots.
- (7) Driveways shall have adequate depth to prevent queuing onto the main roadway while waiting to proceed further into a site.
- (8) For a single-family or two family residential lot, only one driveway shall be allowed per lot. Such driveway shall be a maximum of 24 feet in width.

(I) 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. 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.

Buildings that existed in the B-1 Village Business District and B-2 Commercial-Residential District as of the effective date of this local law, shall be exempt from providing an off-street loading dock or space. During the review of applications for site plan review or special use permit, the Planning Board may waive the requirement for a loading dock or space for new construction or expansion projects in the B-1 and B-2 Districts, provided that the Board can make a finding that such waiver supports the historic character of the District, supports the purpose and intent of the Village's Vision Statement and that the waiver will not pose a hardship to other nearby properties.

(J) Drive-through Windows

- (1) Where permitted in Article VII, a drive-through window may be permitted by the Planning Board as a special permitted use according to the procedures outlined in Article XII 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 or safety hazard, the Planning Board may deny the application.
- (2) The following minimum stacking spaces shall be provided for each drive-through window. The Planning Board may increase these minimums if the expected usage so warrants:
 - (a) Bank: three stacking spaces

- (b) Restaurant: six stacking spaces
 - (c) Car Wash: four stacking spaces
- (3) Stacking 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.
- (4) A by-pass lane is required by the fire code, in addition to the stacking spaces.

(K) Waiver of parking requirements

During the review of applications for site plan review or special use permit, the Planning Board may waive or reduce the requirements for off-street parking contained in Section 9.7(D), provided that the Planning Board finds that one or more of the following circumstances exists:

- (1) The applicant can show that adequate on-street parking exists to serve the establishment.
- (2) The applicant has entered into a legal agreement with a nearby facility to use the parking lot of that facility, and, in the opinion of the Planning Board, the existing parking area is adequate to serve both facilities. Shared use of parking areas for facilities that have different hours of operation is encouraged.
- (3) The applicant has entered into a legal agreement for shared use of an adjacent parking lot and the Planning Board makes the determination that the parking lot is adequate to serve both facilities.

Section 9.8 Temporary 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 Code Enforcement Officer for a period of up to one year. Such permit may be renewed by the CEO for an additional period of up to one year.

Section 9.9 Bed and Breakfast Residence

(A) Purpose

The purpose of this section is to authorize and regulate the establishment and operation of Bed and Breakfast Residences in the Village of Allegany and to insure the preservation of the character, integrity and property values of the surrounding areas within which such facilities are located and maintained. The Village desires to encourage the maintenance of unique structures that pre-date the year 1950 that may have outgrown their suitability as a single-family dwelling.

(B) Permit Required

- (1) A bed and breakfast residence may be allowed, by special use permit granted by the Planning Board, in districts so designated in Article VII of this zoning law. In granting the special use permit, the Planning Board shall follow the procedures in Article XII of this law. Prior to granting the special use permit the Planning Board shall find that the Bed and Breakfast residence meets the criteria for granting a special use permit contained in Article XII of this law and conforms to all the conditions contained in this Section.
- (2) A bed and breakfast residence shall also require site plan review by the Planning Board.

(C) Required Conditions

A Bed and Breakfast Residence shall conform to all of the following conditions:

- (1) The owner of the Bed and Breakfast Residence must reside in and continue to reside in the dwelling as his/her/their principal residence. The owner shall provide a sworn statement, certifying to such residency, to the Code Enforcement Officer at the time of the initial application and at any subsequent renewal.
- (2) Bed and Breakfast Residences shall only be permitted in structures constructed prior to January 1, 1950.
- (3) Each Bed and Breakfast Residence shall be established, maintained and operated so as to preserve and complement the residential character and integrity of the surrounding area when the facility is established in a residential district.
- (4) The number of paying guests accommodated per night shall not exceed eight (8). No guest may stay for a period of time in excess of fifteen (15) consecutive days. No more than four (4) bedrooms of a dwelling shall be occupied by paying guests.
- (5) Food service may only be provided to overnight guests of the establishment and shall be limited to breakfast meals served between the hours of 4:30 a.m. and 12:00 noon. A public dining room, restaurant, or bar are expressly prohibited. There shall be no individual kitchen, dining facility or food preparation in any guest room.

- (6) There shall be no more than one employee.
- (7) Rooms used for sleeping shall be part of the principal residential structure.
- (8) **Parking:** A Bed and Breakfast residence shall provide one off-site parking space for each room that is let, in addition to the required two off-street spaces required for the use of the building as a single-family dwelling. Parking shall not be permitted in the front yard and shall be located or screened from view so as to provide no variation from the residential character of the site.
- (9) **Signs:** A Bed and Breakfast Residence 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.
- (10) All Bed and Breakfast residences shall comply with all applicable provisions of the Building Code.
- (11) A special use permit for a Bed and Breakfast Residence may be revoked, if these provisions and/or any conditions of approval are violated.

Section 9.10 Home-Based Businesses

Where permitted in Article VII of this Zoning Law, a home-based business shall conform to all the requirements of this section, and any other applicable regulations of this Law. Activities that conform to the requirements for Minor Home-based Businesses shall be allowed by right. All other activities shall be considered to be Major Home-based Businesses and shall require a Special Use Permit that has been approved by the Planning Board in accordance with the procedures contained in Article XII of this Law.

(A) General Standards

- (1) The home-based business is clearly incidental and accessory 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, except for one sign as permitted in this Section.
- (2) There is no outdoor storage or display of material or equipment.
- (3) The home-based business shall not generate electrical interference, dust, noise, odors, smoke or traffic that disturbs the peace, quiet, and enjoyment of the neighborhood.
- (4) Retail sales are limited to goods produced on the premises.

- (5) Customer/client visits to the home-based business are limited to the hours from 9 a.m. to 8 p.m.
- (6) Parties or gatherings for the purpose of selling merchandise or taking orders or conducting meetings shall not be held more than four times each month in any one residence.
- (7) Delivery vehicles used to deliver goods to a home-based business are limited to passenger vehicles, United States Postal Service mail carriers, and express carriers such as UPS or FedEx. Deliveries shall be permitted between 8 a.m. and 6 p.m.
- (8) A home-based business shall be limited to the parking/storage of one commercial vehicle on the premises, not exceeding a one-ton capacity. Construction equipment (backhoes, etc.), regardless of whether or not they have commercial licenses, shall not be construed to be commercial vehicles for purposes of this section.
- (9) A home-based business may display one wall sign. The sign may not exceed six square feet in area. The sign may not be illuminated.

(B) Minor Home-based Businesses

- (1) In addition to the General Standards, above, a Minor Home-based Business shall conform to all of the following requirements:
 - (a) There are no employees, other than the residents of the dwelling unit in which the home-based business is located.
 - (b) The home-based business shall not generate more than 5 customer/client visits in any one day, on average over a one-month period.
 - (c) The home-based business shall receive no more than two deliveries per day from the delivery vehicles and services listed in Section 9.10(A), above.
- (2) Permitted minor home-based businesses include, but are not necessarily limited to, the following, provided they meet the criteria for minor home-based businesses contained herein:
 - (a) Offices for authors and composers.
 - (b) Office of a salesman, sales representative, or manufacturer's representative.
 - (c) Offices for professionals such as architects, planners, brokers, counselors, clergy, draftspersons and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, graphic designers, construction contractors, landscape designers, and surveyors.
 - (d) Tutoring of not more than one student at a time.
 - (e) Instruction in a musical instrument for not more than one student at a time.
 - (f) Studios for artists, sculptors, musicians, photographers and craft persons (such as weaving, jewelry making, pottery, woodworking and similar arts/crafts).
 - (g) Workrooms for tailors, dressmakers, milliners and upholsterers.

- (h) Direct sale product distribution, such as Avon, Tupperware, etc.
- (i) Typing, word processing services, data processing, computer programmers, web designers.
- (j) Cake decorating and baking/cooking/catering for a profit.

(C) Major Home-based Businesses

- (1) No Major Home-based Business shall be put into operation without first obtaining a Special Use Permit in accordance with the provisions of Article XII of this Law. In addition to the General Standards, above, a Major Home-based Business shall conform to the following requirements:
 - (a) There is no more than one on-premise employee, in addition to the residents of the dwelling unit in which the home-based business is located.
 - (b) 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. Parking on the lawn in the front of the residence is prohibited.
 - (c) The Planning Board may establish, as a condition of approval, a maximum limit for the number of customer/client visits in any one day.
- (2) Major home-based businesses may include, but are not necessarily limited to, the following:
 - (a) Any activity permitted as a minor home-based business, but which exceeds the threshold for a minor home-based business.
 - (b) Beauty parlors and barber shops
 - (c) Small appliance repair, repair of non-motorized bicycles, repair of watches and clocks.
 - (d) Computer repair

(D) Prohibited Home-based Businesses

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

- (1) Funeral homes
- (2) Automobile body repair work, including painting of automobiles;
- (3) Repair of automobile, snowmobile or other vehicular engines
- (4) Medical and dental offices
- (5) Retail sale of goods not made on the premises
- (6) Manufacturing
- (7) Restaurants and bars
- (8) Kennels and veterinary clinics
- (9) Adult Entertainment Establishments

Section 9.11 Site Design

(A) Purpose

The purpose of this section of the zoning law is to encourage and provide for enhanced property development within the Village of Allegany. It is also the purpose of this section to promote development that has consistency of architectural character and site design and positive visual aesthetics, and to protect residential neighborhoods from the traffic, congestion and other potential impacts that may result from adjacent commercial development through the use of landscaping, buffering, and screening.

(B) Applicability

These site design guidelines shall apply to all developments in the B-1 Village Business District, B-2 Commercial-Residential District and B-3 General Business District that require site plan review. The Planning Board may also apply these guidelines to new developments in other parts of the Village, through site plan review, if the individual circumstances of a proposed development or the area for which it is proposed so warrant. Single family and two family dwellings in the R-1 and R-2 Districts are exempt from the provisions of this section.

(C) Site Design Guidelines

(1) General Criteria

- (a) The proposed development shall have an overall clarity and coherence of design.
- (b) Parking lots shall be located in the rear and/or side of buildings, where feasible. In the B-1 Village Business District and B-2 Commercial-Residential District, off-street parking areas and/or parking lots shall not be allowed in front of buildings.
- (c) In the B-1 Village Business District and B-2 Commercial-Residential District, buildings shall be located close to the sidewalk, in order to maintain and strengthen the historic building line and the pedestrian-oriented character of this District. The dimensional regulations of this district (See Article VII) allow this building orientation. Buildings should have their main entrance on Main Street.
- (d) Outside of the B-1 and B-2 Districts, new developments are encouraged to maintain the predominant setback in the area in which they are located, to promote coherence of design. If there is no predominant setback, buildings are encouraged to be located close to the front yard setback, to promote a pedestrian scale of development.

(2) Building Massing and Architectural Features

- (a) New buildings shall relate to the surrounding environment with regard to texture, scale, massing, proportion, and color. A strong visual relationship between the building, the site, and adjacent development is vital for overall design compatibility. The use of different textures, complementary colors, shadow lines, detailing, and contrasting shapes to create an appealing facade is strongly encouraged. The use of single colors and/or blank walls is discouraged.
- (b) Buildings shall be designed to achieve a human scale and interest.
- (c) Franchise-style architecture (also known as prototypical or corporate architecture) shall not be allowed in the B-1 Village Business District or B-2 Commercial-Residential District. The use of franchise-style architecture is discouraged elsewhere in the Village, but it may be allowed in the B-3 General Business District or in the I-1 Industrial District if it is shown that the franchise-style design and materials are in compliance with, or can be modified to be in compliance with, the intent of this zoning law and of the Route 417 Corridor Management Plan.
- (d) Development shall conform to the following criteria:
 - i. Buildings shall not overpower the surrounding buildings, uses and landscape.
 - ii. Care shall be given to the character of all sides of the building, not just the "front" facade.
 - iii. Long, uninterrupted blank walls are discouraged.
 - iv. Window and door openings shall be maximized along the front of buildings, to make them inviting.
 - v. Architectural detailing, such as recessed windows and/or doors, bays, and textured materials or decoration, is encouraged to create variety and provide interest.
- (e) In areas where there is a well-established, consistent architectural and/or design character, new developments shall be compatible with the general character of that development. The existing proportional relationship between buildings, open space and building setbacks shall be maintained. New development shall be compatible with the color, height, materials, and design of the predominant style of existing buildings.
- (f) In the B-1 Village Business District and B-2 Commercial-Residential District, renovations of existing buildings are encouraged to retain the original architectural form and style, prominent features and materials of the original building. New buildings in the B-1 and B-2 Districts are not expected to be copies of older styles, but should respect the historic character of the Districts, and should be compatible with existing buildings in terms of materials, massing, scale and proportion. Façade elements, such as windows and doors, should be arranged in a consistent pattern. The rhythm of façade openings on new structures adjacent to historic older

structures should be compatible with the façade openings on the adjacent and nearby structures.

- (g) Height: Two-story commercial buildings are encouraged. Single story commercial structures in the B-1 and B-2 District are especially discouraged.
- (h) Roof Design: A variety of roof types, heights and gable styles in proportion to building size is encouraged. Extensive use of flat, very low, or very steeply pitched roofs generally is discouraged.
- (i) Building Materials:
 - i. Facade materials such as brick, natural stone and wood are encouraged.
 - ii. Trim such as painted or stained wood or anodized aluminum is encouraged.
 - iii. Windows should have anodized aluminum or wood frames, not bare aluminum frames.

(3) Mechanical Equipment

- (a) Rooftop mechanical equipment shall be screened from public view by the use of architecturally compatible materials.
- (b) Ground level mechanical and service equipment (such as air conditioning units and utility boxes and meters) should be screened from public view by the use of landscaping, walls, fencing or other design treatment compatible with the architectural style and materials of the principal structure.
- (c) Garbage dumpsters and receptacles shall be placed out of view from adjacent properties, pedestrian ways (trails and sidewalks), and adjoining streets.

(4) Loading docks or service delivery locations shall be located to the rear of the building and screened from view.

(5) Site grading for new construction shall blend in with the surrounding grades. The finished grade shall not be significantly higher or lower than the surrounding area, and shall not appear unnatural.

(6) Lighting and Glare

- (a) Exterior lighting and fixtures for building illumination shall blend with the architectural design.
- (b) Exterior lighting shall provide adequate illumination for security purposes without excess glare. All lighting, including that in parking areas shall be located to minimize glare and illumination of adjacent and neighboring properties. Only the amount of illumination needed to do the job shall be used.

- (c) To the maximum extent feasible, cut-off style fixtures meeting Illuminating Engineering Society of North America (IESNA) standards shall be installed for all new and replacement lighting installations. This type of fixture directs light downward where it is needed. However, in the B-1 Village Business District and B-2 Commercial-Residential District more historic style lighting may be appropriate. Historic style lighting fixtures, by their very nature, cannot be cut-off fixtures, so the need to reduce glare should be balanced by the historic character of the area and the architectural style of the building in determining an appropriate fixture.
- (d) To the maximum extent feasible, security lighting should meet IESNA cut-off requirements. Floodlights and non-shielded wall-mounted fixtures spill the most light and cause glare. If non-cut-off fixtures are used, the Planning Board may require that they be motion sensor lights that turn on only when intruders are detected.
- (e) Lighting for signs shall be kept to the minimum needed to read the signs.

(D) Streets

If a site plan contains a stub street, the Planning Board may require, as a condition of approval, that such street be extended, either as part of the current application or in the future to serve currently undeveloped abutting properties.

Section 9.12 Landscaping

(A) Purpose

Well-maintained landscaping improves a community's image, leading to improved economic vitality. Landscaping can improve the image of the community and the pride residents have for their community. Landscaping adds visual interest, seasonal variety and a softer texture to development. Landscaping can serve as a buffer between two conflicting land uses, thus reducing conflict between them. Well designed landscaping can reduce negative visual impacts from development, reduce noise and increase privacy.

(B) Applicability

A landscaping plan shall be required of all applications that require site plan review. The Planning Board will evaluate the landscaping plan using the following guidelines.

(C) Landscaping guidelines**(1) General Standards**

- (a) All exterior areas of any site not required for parking, driveways, sidewalks, primary and accessory structures or utility structures shall be landscaped.
- (b) Existing Vegetation: The preservation of mature plant species and of existing trees over 8 inches in diameter (measured at breast height) as a design element in a development's landscape plan is encouraged. The retention and use of existing vegetation may be incorporated into the development's landscaping plan.
- (c) The landscaping plan shall provide sufficient landscaping to adequately screen mechanical equipment, loading docks and other negative site features. In addition, the landscaping plan shall provide sufficient landscaping to serve as a positive site amenity.
- (d) Landscaping features may include the preservation of existing vegetated open space; plantings of deciduous trees, evergreens, shrubs, ground cover, perennial and/or annual plants; berms, walls, and fencing. No plastic or artificial plants shall be used to meet any requirement of this ordinance.
- (e) The amount and scale of all landscaping should correspond to the proposed land use and the context in which it is located. More landscaping shall be required if the proposed use is not compatible with adjacent land uses or contains site features that need to be screened from view.

(2) Buffers

- (a) Landscaped buffers between existing residential uses and new commercial or industrial development are required.
- (b) Landscape plantings within a buffer shall include a variety of species with different heights and widths. The appearance should be natural, with clustering preferred over planting in rows, when feasible.

(3) Parking Lots

- (a) Landscaped buffers around the perimeter of parking lots to screen parked vehicles and to improve views to the site may be required, depending upon the visibility of the parking lot.
- (b) For parking lots providing spaces for more than five automobiles, a landscaped buffer shall be provided between any adjacent sidewalk or public right-of-way and the parking lot.

- (c) Parking lots with more than fifty spaces shall dedicate at least 5 percent of the interior area to landscaping. Landscaping should include trees, shrubs, and ground cover, and should be established on planting islands throughout the parking lot. This requirement is in addition to the requirement for perimeter buffer planting.

(4) Maintenance

- (a) Landscaping shall be designed for easy maintenance. The selection of landscaping materials shall be compatible with the climate of western New York, soil type and condition, and water availability.
- (b) Landscaping shall be maintained in a healthy condition throughout the year. Landscaped areas are to be kept neat and free of litter and weeds.
- (c) The applicant and all succeeding owners are required to maintain the landscaping in perpetuity. If trees on the landscaping plan, including those retained at the time of the initial construction, die, they shall be replaced within six months. Shrubbery or other plantings that die shall also be replaced in kind within six months. If the landscaping plan calls for annuals, those plants shall be replaced yearly. If the landscaping is not well maintained, and/or replaced as needed, the Planning Board has the authority to revoke the project's site plan approval.
- (d) The Planning Board may require a landscaping bond to be posted for a period of up to two years in an amount to cover the cost of the initial planting approved by the Board and for replacement planting during the first year.

(5) Landscaping materials

- (a) Landscaping materials shall have the following minimum sizes, at planting, unless the applicant can show that a smaller size would accomplish the purposes of this Section:

Plant type	Minimum Size
Deciduous trees	2 inch caliper
Evergreen trees	6 foot height
Small flowering trees	1 inch caliper
Large shrubs	30 to 36 inch height
Small shrubs	18 to 24 inch height

- (b) Hedges shall be a minimum of 24 inches in height at the time of planting. Spacing of the planting shall depend upon the species. Hedges shall form a solid continuous visual screen at least three feet in height within 2 years of planting.
- (c) Species of trees shall not be planted if the roots may cause damage to public water and sewer lines, if the branches are subject to a high incidence of breakage, or if the

fruit is considered a nuisance or high maintenance, as determined by the Planning Board.

(6) Ground Treatment

- (a) The ground area within required landscaping areas which is not dedicated to trees or preservation of existing vegetation shall receive appropriate landscape treatment and shall present a finished appearance and complete coverage upon completion. Sand or pavement shall not be considered appropriate landscape treatment.
- (b) Ground cover may be planted in lieu of grass in conjunction with planting of trees, shrubs, or hedges. Ground cover shall provide a minimum of 50 percent coverage immediately upon planting and 100 percent coverage within two years after planting.
- (c) Grass areas shall be planted with species suitable as permanent lawns. Grass areas shall be regularly maintained.

Section 9.13 Adult Entertainment Establishments

(A) Purpose

It is recognized that there are some uses, including Adult Entertainment Establishments, which, due to their very nature, have serious objectionable operational characteristics, particularly when located in close proximity to residential neighborhoods and other sensitive land uses. The objectionable characteristics of Adult Entertainment Establishments are further heightened by their concentration in any one area, thereby having deleterious effects on adjacent areas. It has been acknowledged by communities across the nation that state and local governments have a special concern in regulating the operation of such businesses under their jurisdiction to ensure that these adverse secondary effects will not contribute to the blighting or downgrading of adjacent neighborhoods nor endanger the well-being of the youth in their communities. The *Town and Village of Allegany Adult Use Study* indicated that these effects may occur locally, and therefore that the Village should enact provisions to regulate the secondary effects of adult uses.

The special regulations deemed necessary to control the undesirable secondary effects arising from these enterprises are set forth below. The primary purpose of these controls and regulations is to preserve the integrity and character of residential neighborhoods and important natural and human resources of the Village, to deter the spread of blight, and to protect minors from objectionable characteristics of these Adult Entertainment Establishments by restricting their proximity to churches, schools, parks, historic and scenic resources, civic and cultural facilities and residential areas.

The operation of Adult Entertainment Establishments may have serious and damaging effects upon their surroundings as a result of their siting and the concentration of these facilities. Special regulations pertaining to these uses are necessary to ensure adverse effects will not

contribute to the blighting or downgrading of the surrounding neighborhood. These regulations will help ensure that adverse effects on the public health, safety, morals, comfort, convenience and general welfare are mitigated.

The development and proliferation of Adult Entertainment Establishments without regulation as to siting and concentration may result in the deterioration of residential and business neighborhoods. If placed near schools and other youth-related facilities, Adult Entertainment Establishments may adversely effect the welfare and morals of minors residing within the Village of Allegany.

(B) Location of Adult Entertainment Establishments

The following provisions shall apply to Adult Entertainment Establishments. These provisions shall be considered to be the minimum standards.

- (1) Adult Entertainment Establishments may be permitted by a special use permit granted by the Planning Board, in a district(s) so designated in Article VII of this local law. No special use permit shall be granted unless the Planning Board finds that the Adult Entertainment Establishment conforms to all the provisions of this section of the zoning law, in addition to the criteria in Article XII and any other applicable provisions of this law. In the event of any conflict between any such provisions, the more restrictive shall apply.
- (2) No Adult Entertainment Establishment shall be permitted within two hundred fifty feet (250) of any residential use.
- (3) No Adult Entertainment Establishment shall be permitted within five hundred (500) feet of the following:
 - (a) A school, nursery school, or day care center;
 - (b) Religious institution, house of worship, convent or monastery;
 - (c) A public or private park, playground or public recreation facility, or recreational trail;
 - (d) Historic or scenic resource, civic or cultural facility.
- (4) No more than one Adult Entertainment Establishment shall be located in the same building or upon the same lot or parcel of land.
- (5) No Adult Entertainment Establishment shall be located within a five hundred (500) foot radius of another Adult Entertainment Establishment.
- (6) No Adult Entertainment Establishment shall be located in any building that is used in whole or in part for a residential use. No residential use may be established in a building that contains an Adult Entertainment Establishment.

- (7) All building openings, including doors and windows, shall be coated, covered or screened in such a manner as to prevent a view into the establishment from any public street, sidewalk or parking area.
- (8) No loudspeakers or sound equipment, which can be heard by the public outside the Adult Entertainment Establishment establishment, shall be permitted in Adult Entertainment Establishments.
- (9) As a condition of approval of any Adult Entertainment Establishment, there shall be a restriction that no person under the age of eighteen (18) years of age shall be permitted into or on the premises.
- (10) All Adult Entertainment Establishments shall be operated in a manner that is consistent with the New York State Penal Law relating to exposure, obscenity or lewdness.

(C) Measurement of Required Distances

For measurement purposes, the distance between an Adult Entertainment Establishment and any such other named use shall be measured in a straight line without regard to intervening structures or objects from the closest structural wall of such Adult Entertainment Establishment to the property line of the other named use.

(D) Additional Sign Requirements

In addition to the sign requirements of Section 9.6 of this local law, the following provisions shall apply to signs erected or maintained in connection with an Adult Entertainment Establishment. The Planning Board shall review and approve all signage as part of the special use permit application.

- (1) No off-premises signs or freestanding signs shall be permitted.
- (2) Advertisements, displays or promotional materials shall not be shown or exhibited so as to be visible to the public from pedestrian sidewalks or from other public or semi-public areas, and such displays shall be considered to be signs.
- (3) No more than one business wall sign shall be permitted for an Adult Entertainment Establishment and such sign shall be permitted only on the front façade.
- (4) Sign messages shall be generic in nature, shall not contain material classified as advertising, and shall only identify the business that is being conducted. No exterior sign associated with an Adult Entertainment Establishment shall contain any photographic or artistic representation of the human body.
- (5) 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.

Section 9.14 Recycling Centers

A recycling center may be allowed, by grant of special use permit, in district(s) so designated in Article VII of this local law. All recycling centers shall conform to the following requirements. Additional requirements may be imposed as a condition of approval of the Special Use Permit.

- (A) The permittee must erect and maintain in good condition a fence, of wood or other material acceptable to the Planning Board, which is of adequate height and construction to prohibit the entrance of children and others into the area and which provides screening. All materials dealt in by the permittee must be kept within the fenced area, or within a wholly enclosed building. If the site of the establishment abuts a residential zoning district or a public street or highway, the fence shall be at least fifty feet from the boundary line of the zoning district or from the right-of-way line of the street.
- (B) When the area is not supervised by the permittee or his employees, the fence shall be locked at a secure gate in a secure manner.
- (C) The recycling center shall not be used as a dump area or as a place for the burning and disposal of junk or trash. Open fires are prohibited.
- (D) The storage or dismantling of automobiles or other motor vehicles shall not be allowed as a recycling center.
- (E) No oil, batteries, and other hazardous materials may be accepted.
- (F) No processing of materials may occur on site. Materials may be stored and packaged for shipment to other facilities. Any baling or crushing that may be permitted by special use permit, shall take place in a wholly enclosed building.
- (G) The open storage of recyclable materials in the Village of Allegany may only be permitted in Recycling Centers that have been approved by grant of Special Use Permit.

Section 9.15 Telecommunications Facilities

(A) Intent and Purpose

- (1) The Federal Telecommunications Act (“the Act”) was signed into law in February 1996. The passage of the Act, the increased sale of airwave rights and issuance of licenses by the FCC, the increased demand for wireless communication services, and new technology have led to a significant increase in the demand for telecommunications facilities within the state. The Village of Allegany has received several requests to locate such facilities within the Village or expects to receive such requests. The Village of Allegany also has significant concerns over the location of telecommunication facilities within the Village. The 1996 Act preserves the authority of local governments over reasonable non-discriminatory decisions regarding the placement, construction, and modification of telecommunications facilities. It is the Village of Allegany’s intent through this section of the zoning laws to use its local authority over telecommunications facilities as provided for by the Federal Telecommunications Act of 1996.
- (2) The purpose of this Section is to set forth a means by which the Village of Allegany can ensure that the installation of these telecommunications facilities proceeds in a fashion that minimizes any adverse impacts while maximizing services and benefits to the community. The Village of Allegany wants to accommodate the need for telecommunications facilities while regulating their location and number, minimize adverse visual effects through proper design, siting and screening, avoid potential physical damage to adjacent properties, and encourage joint use of such facilities.
- (3) In order to accomplish the purposes enumerated above, the Village encourages the placement of telecommunications antennas on suitable existing structures.
- (4) Telecommunications facilities may be permitted with a grant of special use permit in the I-1 Industrial District. However, the Village recognizes that circumstances may warrant the placement of a telecommunications facility in another area of the community, which will necessitate an application for a variance. The Village has established a hierarchy of preferred locations outside of the Industrial District for telecommunications towers. This hierarchy is intended to serve as a guideline for potential applicants. The locations/districts are listed in order from most preferred to least preferred:
 - (a) Property with an existing structure suitable for co-location. Placement of the antenna(s) on a suitable, existing structure is encouraged whenever feasible.
 - (b) Municipal or government-owned property.
 - (c) Business Districts
 - (d) Residential Districts

(B) Review Authority

- (1) The Planning Board is hereby authorized to review and approve, approve with modifications or disapprove special use permits for telecommunications towers, antennas, and facilities pursuant to this law. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunications facility, including the use of camouflage of the tower structure and/or antenna to reduce visual impact.
- (2) Except as provided below, no telecommunications tower, antenna or facility shall hereafter be erected, moved, reconstructed, changed or altered and no existing structure shall be modified to serve as a telecommunication facility, except after obtaining a special use permit in conformity with this law.
- (3) 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.

(C) Submission Requirements

All applicants for a special use permit for a telecommunications facility shall submit the following documents and information:

- (1) Special Use Permit Application
- (2) Site Plan Application
- (3) Project Participants

Provide the names, addresses, phone and fax numbers of the following involved parties, as appropriate:

- Landowner of the project site to be purchased or leased
- The service-provider (both the corporate information and a local contact). Include the FCC license number and certificate of need as a public utility
- Engineering consultant
- Other authorized service providers proposing to co-locate on the tower now or in the near future.

Where co-location is proposed, provide the names, addresses and phone numbers of the current owner(s) of the tower, building or structure upon which the co-location was considered or is proposed.

(4) Site Description

Provide a narrative description of the proposed project site, including:

- Existing site improvements, including access, utilities, and the presence of existing towers, buildings, or other structures.
- Vegetative cover (plant cover types, tree types)
- Slopes
- Soils and depth to bedrock
- Wetland and surface water bodies; floodplains
- Site drainage
- Any special plant and animal habitats contained on the NYSDEC Natural Heritage Program database
- Any historic or archaeological resources on the site and any historic resources adjacent to the site.

Where co-location is proposed, provide to-scale site plans and elevations of the existing tower, building or structure to be used for co-location. Provide plans, elevations, and details showing the proposed electronic communication facilities and existing antennae located on the tower.

(5) Site Plan

Provide a detailed, labeled, and to-scale site plan that includes the following information. The site plan must be prepared by a qualified professional engineer licensed in the state of New York and must bear the preparer's signature.

- (a) Scale, north arrow, date and name of preparer
- (b) Project site boundaries (if part of a larger parcel, include a map of the larger parcel and the location of the area to be acquired or leased for the project). A copy of an up-to-date property survey must be provided.
- (c) Abutting property owners' names and addresses
- (d) All bodies of water, wetlands, permanent or intermittent streams, floodplains
- (e) Existing and proposed topographic contours at two-foot intervals in and within 200 feet of all proposed areas to be disturbed.
- (f) All existing or proposed structures, buildings, towers, antennas, utility, roads, driveways, guy wires and anchors, parking.
- (g) The location and use of all structures on any adjacent property within fifty feet of the property lines, together with the distance of these structures to any proposed tower.
- (h) Existing vegetation cover types and tree lines
- (i) The proposed limits of vegetation disturbance and/or clearing related to the proposed construction of the site access, tower and accessory structures
- (j) All trees 4 inches or greater in size (diameter at breast height, DBH) to be removed.
- (k) All proposed planting and landscaping.
- (l) All existing and proposed drainage and erosion control and stormwater management facilities.

- (m) The location, nature and extent of any proposed fencing and/or screening
- (n) The location and nature of proposed utility easements, if any.

(6) Construction details

Provide detailed construction plans and elevation of the proposed tower, antennae, equipment shelters (enclosed building, structure, shed, etc.). Show all foundations, piers, structural supports, cross arms, guy wires and anchors, antennae mounting mechanisms and signage. Label the size, material and provide color samples of all towers, antennae and accessory structures. All drawings shall be prepared by a qualified professional engineer licensed to practice in the State of New York, and shall contain his/her signature. Include the following:

- (a) The exact location of any proposed tower.
- (b) The height of any proposed tower.
- (c) A detail of the tower type (monopole, guyed, lattice, etc.).
- (d) The color or colors of the tower.
- (e) The location, type and intensity of any lighting on the tower.

(7) Site access, construction and operation

Describe the type, location and size of any road and/or driveway providing access to the proposed tower site. Describe any proposed temporary or permanent improvements, including any proposed vegetation removal, site drainage, crossing of streams or wetlands and installation of utilities and any impervious surfaces. Provide a grading plan for any new roads, driveways or accessways. Indicate the construction material (i.e. gravel, asphalt, etc.)

(8) Telecommunications data

- (a) Describe the facility and technical, economic and other reasons for the facility and tower design.
- (b) Provide “Before” and “After” propagation studies prepared by a qualified professional engineer, licensed in the state of New York, demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.
- (c) Provide a “Search Ring” prepared by a qualified professional engineer, licensed in the state of New York, and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide signal strength and coverage (this meaning adequate coverage as opposed to desired coverage) to the target cell. The applicant must be prepared to explain to the Planning Board why it selected the proposed site, discuss the availability or lack of availability of a suitable structure within the search ring

which would have allowed for a co-located antenna(s), and to what extent the applicant explored locating the proposed tower in a more intensive use district.

- (d) Describe how many and what kinds of antennas are proposed.
 - (e) Describe how many and what kinds of antennas are possible on the tower.
 - (f) Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure.
 - (g) Describe the fall zone of the proposed tower.
 - (h) For any telecommunications facility that will be placed on an existing structure or that will use an existing telecommunications tower, provide a letter 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.
- (9) A letter of intent committing the facility owner to negotiate in good faith for shared use by third parties in the future. This letter shall be filed with the Code Enforcement Officer prior to issuance of a building permit (assuming the telecommunications facility is approved). Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. This letter shall commit the facility owner and his 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) Allowed shared use if an applicant agrees in writing to share 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-rate share of the cost, site design, construction and maintenance, financing, return of equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

(10) Other regulatory permits and approvals

The applicant shall identify all permits or approvals necessary from local, state or federal agencies for this proposed project. Provide copies of written approvals and other permits received, including:

- (a) A copy of Applicant's Federal Communications Commission (FCC) license
- (b) A letter from the Federal Aviation Administration (FAA), stating any requirements that they may have (or lack of any requirements, if none are necessary).
- (c) The applicant shall submit to the Village Code Enforcement Officer copies of all licenses and permits required by other agencies with jurisdiction over the design, construction, location and operation of its Telecommunications Facility and

applicant shall maintain such licenses and permits and provide evidence to the Village Code Enforcement Officer of renewal or extension thereof when granted.

(11) Environmental Review and Visual Impact Analysis

All applications to the Village of Allegany for telecommunications facilities shall be considered as a Type 1 Action under New York State Environmental Quality Review Act (SEQR) and will require a Full Environmental Assessment Form (EAF) and the Visual Addendum to the EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual Addendum which may include a map showing locations from which the facility may be seen, line – of – sight drawings, visual simulations of “before and after” views from viewpoints selected by the Planning Board, assessment of alternative tower designs and color schemes and assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and streets.

(12) All required fees.

(13) Any other material that the Planning Board deems necessary to evaluate the application.

The Planning Board may waive any particular submission requirement(s) it determines unnecessary for review of a particular project.

The Village of Allegany, 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 other pertinent information provided by the applicant.

(D) General Criteria

No special use permit relating to a telecommunications facility shall be authorized by the Planning Board unless it finds that such facility:

- (1) Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities.
- (2) Conforms to all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration and other federal agencies.
- (3) Is designed and constructed in a manner which minimizes visual impact to the maximum extent practical.
- (4) Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.

- (5) Conforms to the standards contained in this section and in other sections of this zoning law, unless they are expressly superceded herein. These standards shall be considered the minimum requirements.

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 zoning board.

(E) Co-location

- (1) The shared use of existing telecommunications towers or other structures shall be preferred to the construction of new facilities. Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within an existing telecommunication facility or upon an existing structure within a reasonable distance of the site. The applicant must demonstrate that the proposed telecommunication facility cannot be accommodated on existing telecommunication facilities due to one or more of the following reasons:
- (a) The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structures, considering existing and planned use for those facilities.
 - (b) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented.
 - (c) Existing or approved telecommunications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably.
 - (d) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures.
 - (e) The property owner or owner of the existing 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.
- (2) The applicant must submit a copy of its policy regarding co-location on the proposed tower with other potential future applicants. Such policy should allow co-location on the proposed tower under the following conditions:
- (a) 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;

- (b) The party desiring to co-locate pays the applicant an appropriate and reasonable sum to co-locate;
- (c) The party desiring to co-locate has a similar policy of co-location for the applicant.

(F) Visibility and Aesthetics

- (1) Telecommunication Facilities shall be located and buffered to the maximum extent which is practical and technologically feasible to help insure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring properties to the extent possible, the Planning Board may impose reasonable conditions on the applicant. These conditions may include specially designed towers, additional screening, greater setbacks, and improved landscaping to address aesthetic concerns.
- (2) 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. In all cases, the maximum height for telecommunication towers permitted under this section, including any antennas or other devices extending above the tower, measured from the ground surface, shall be 150 feet.
- (3) Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding treeline, 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. Accessory uses shall maximize use of building materials, colors, and textures designed to blend with the surrounding area.
- (4) The project shall be designed to blend with the natural and /or man-made surroundings to the maximum extent practicable.
- (5) Structures offering slender silhouettes (i.e. monopoles or guyed tower) may be preferable to freestanding lattice structures except where such lattice structures offer capacity for future shared use. The Planning Board may consider the type of structure being proposed, the surrounding area, and the potential for its effects on migratory and year-round bird populations.
- (6) No outdoor storage of equipment and/or vehicles shall be permitted on the facility site.
- (7) If co-location or the use of existing structures is not feasible, the Planning Board may require the applicant to show that he has made good faith efforts to construct the proposed new tower near existing towers in order to consolidate visual disturbances.

(G) Lighting

Towers shall not be artificially lighted except to assure human safety as required by the Federal Aviation Administration (FAA). The Planning Board may choose the most appropriate lighting and marking plan from the options acceptable by the FAA at that location. The applicant must provide both standard and alternative lighting and marking plans for the board's review. Notwithstanding, an applicant may be required to add FAA-style lighting and marking, if in the judgement of the Planning Board, such a requirement would be of direct benefit to public safety. Lighting shall not consist of strobe lights, unless specifically mandated by the FAA. When lighting is required, it shall be oriented inward so as not to project onto surrounding property, to the maximum extent feasible.

(H) Fall Zones

Telecommunications facilities shall be constructed so as to minimize potential safety hazards and shall be located in such a manner that if the facility should fall, it will remain within the property boundaries and avoid habitable structures, public streets, utility lines and other telecommunication facilities.

(I) Setbacks

- (1) As a minimum requirement, all Telecommunication Facilities shall comply with all existing setbacks within the zoning district in which they are located. Setbacks shall apply to all tower parts, including guy wire anchors and to any accessory facilities. Additional setbacks may be required by the Planning Board to contain on-site substantially all icfall or debris from tower failure and/or to preserve the privacy of adjoining property.
- (2) A tower setback may be reduced in the sole discretion of the Planning Board to allow the integration of the tower into an existing structure, such as a church steeple, light pole or similar structure.

(J) Vegetation and Screening

- (1) Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at breast height) shall take place prior to approval of the special use permit. Clear-cutting of all trees in a single contiguous area shall be minimized to the extent possible.
- (2) The Planning Board may require appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to buffer their view from neighboring residences, recreation areas, waterways, historic or scenic areas, other properties or public roads.

(K) Access and Parking

An access road, turnaround and a minimum of one parking space shall be provided to assure adequate emergency and service access. The maximum use of existing roads, public or private, shall be made. New road construction shall be consistent with standards for private roads and shall at all times minimize ground disturbance and vegetation cutting. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion potential.

(L) Signage

The use of any portion of a telecommunication facility for signs for promotional or advertising purposes, including, but not limited to company name, phone numbers, banners, streamers, and balloons, is prohibited. A small sign shall identify the ownership of the facility and the telephone number for emergencies. The Planning Board may require the installation of signage with safety information, such as "No trespassing" or "Danger. Keep out."

(M) Bird Protection

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 Village of Allegany 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 Village Clerk. Among the recommendations, which should be followed to the maximum extent possible, are the following:

- (1) Towers should use construction techniques that do not require guy wires (i.e. use lattice structure, monopole, etc.
- (2) Security lighting for on-ground facilities and equipment, if required, should be down-shielded to keep light within the boundaries of the site.

Note that the Planning Board may have to balance the protection of birds and the visual intrusiveness of the proposed towers, under some circumstances. Allowing towers that are the minimum height necessary to provide the required service will help meet both the goal of protecting birds and the goal of mitigating the visual intrusiveness of the towers.

(N) Security

- (1) Towers, anchor points around guyed towers, and accessory structures shall each be surrounded by fencing not less than eight (8) feet in height or otherwise sufficiently protected from trespassing or vandalism.
- (2) There shall be no permanent climbing pegs within fifteen feet of the ground.
- (3) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site.

(O) Engineering Standards

- (1) All telecommunication facilities 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) All towers shall be designed by a qualified professional engineer, licensed in the state of New York. Each application must contain a site plan for the facility prepared by said engineer and containing his/her signature.
- (3) Telecommunications facilities may operate only at Federal Communications Commission (FCC) designated frequencies and power levels and/or Environmental Protection Agency (EPA) technical exposure limits. The Planning Board may require that the applicant provide competent documentation to support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.
- (4) Each application for installation of an antenna shall include a certified statement prepared by a qualified professional engineer, licensed in the state of New York, that states that the installation of the antenna, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and non-residential properties or with public safety telecommunications.
- (5) Every facility shall be inspected, at the owners expense, at least every two (2) years for structural integrity by a qualified professional engineer, 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. 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 indicate 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.

(P) Abandonment and Removal

- (1) All abandoned, obsolete or unused telecommunication facilities/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 seeding of exposed soils.
- (4) The Planning Board shall require, as a condition of approval of the special use permit, that the applicant post a bond with the Village prior to the issuance of a building permit. The bond shall be in an amount sufficient to allow the Village to remove the unused, abandoned or obsolete tower if the owner fails to do so within the prescribed time period.

(Q) Revocation of Special Use Permit

The Planning Board shall have the authority to revoke a special use permit, after a public hearing, if the permittee fails to comply with any condition(s) of approval of the special use permit. The public hearing shall be held following the noticing and hearing requirements established in this local law for a special use permit application. If the special use permit is revoked, the telecommunications tower and associated facilities shall be removed within ninety (90) days of notification by the Village at the owner's expense.

(R) Expiration of Special Use Permit

The grant of Special Use Permit shall expire if construction of the telecommunications tower, antenna, and/or facility has not been completed within 18 months from the date of approval of the application.

Section 9.16 Keeping of Exotic and Farm Animals

(A) Purpose

In order to protect the health, safety and welfare of the residents of the Village of Allegany, to preserve the character of the community as one of village-scale development, and to prevent nuisance odors and noise, the Village of Allegany enacts these restrictions on the keeping of exotic and farm animals within the village.

(B) Applicability

- (1) In all zoning districts, farm animals and exotic animals shall be prohibited.
- (2) Nothing in this section shall prohibit the keeping of household pets, as defined in this local zoning law.

Section 9.17 Accessory Apartments

(A) Where permitted in Article VII, District Use Regulation, an accessory apartment may be allowed as an accessory use to a lot containing a single family home, subject to obtaining a Special Use Permit from the Planning Board.

(B) All accessory apartments shall comply with the following standards.

- (1) There shall be no more than one (1) accessory apartment per lot.
- (2) The lot on which an accessory apartment is located shall have a minimum lot size of 8,000 square feet, shall have a minimum lot depth of 110 feet, and shall have a minimum lot frontage of 70 feet.
- (3) The applicant shall demonstrate that the existing sewage disposal system and water supply are adequate to serve the accessory apartment.
- (4) 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.
- (5) An accessory apartment may be located in a freestanding building or in a garage. The accessory building shall conform to the setback requirements for accessory buildings on the lot.
- (6) The minimum gross floor area for an accessory apartment shall be three hundred (300) square feet.

- (7) Mobile homes and/or manufactured homes shall not be allowed as accessory apartments.
- (8) Legal title to the accessory apartment and single-family unit shall be held in the same name. An accessory apartment may be rented but shall not be sold separately from the single family home.

ARTICLE X

ADMINISTRATION AND ENFORCEMENT

Section 10.1 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, structure or lot shall apply to the Code Enforcement Officer for a Zoning Permit by filing the appropriate application form and by submitting the required fee. The Code Enforcement Officer will then either issue or deny the Zoning Permit or refer the application to the Zoning Board of Appeals or the Planning Board. If the application for a Zoning Permit is denied, the applicant may appeal this decision 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 Code Enforcement Officer for a Certificate of Zoning 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 Code Enforcement Officer on his own authority.
- (2) Special Use.** A Zoning Permit for a Special Use may be issued by the Code Enforcement Officer upon order of the Planning Board, after a public hearing held by the Planning Board for the purpose of receiving information regarding the application for a Special Use Permit.
- (3) Zoning Permit After an Appeal or a Request for a Variance.** A Zoning Permit may be issued by the Code Enforcement Officer 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 appeal or request for a variance.
- (4) Zoning Permit After Site Plan Review.** A Zoning Permit may be issued by the Code Enforcement Officer upon the order of the Planning Board.

Section 10.2 Code Enforcement Officer

This Local Law shall be enforced by a Code Enforcement Officer who shall be appointed by the Village Board. No Zoning Permit or Certificate of Zoning Compliance shall be issued by him/her except upon compliance with all the provisions of this local law.

(A) Duties. The powers and duties of the Code Enforcement Officer shall include the following:

- (1) Examine applications pertaining to the use of land, buildings, and structures.
- (2) Receive and forward for appropriate action all applications for special uses, site plans, variances, requests for interpretation of this zoning law, and amendments to this law.
- (3) Insure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required, before issuing a local permit.
- (4) Issue Zoning Permits and Certificates of Zoning Compliance, when all provisions of this local law have been complied with.
- (5) Conduct such inspections of buildings, structures and use of land as are necessary to determine compliance with the provisions of this zoning law. Investigate complaints of potential violations that are reported in writing and investigate potential violations that he/she may observe.
- (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 Village Board, Planning Board and/or 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 Village Board.
- (8) The Code Enforcement Officer shall maintain a permanent record of every administrative decision that he/she makes and shall maintain a copy of each permit that he/she issues. Copies of all permits and certificates issued shall be furnished upon request to any person having a proprietary or tenancy interest in the building or property affected.
- (9) Conduct inspections of changes of use, pursuant to Section 10.4 of this local law.
- (10) Perform any other duties which may be established by the Village Board.

(B) Zoning Permits

- (1) **General.** No building or structure shall be erected, added to, structurally altered or changed in use until a zoning permit therefor has been issued by the Code Enforcement Officer. Except upon written order of the Zoning Board of Appeals, no such Zoning Permit or Certificate of Zoning Compliance 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 buildings, structures and accessory buildings to be erected or altered 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 Code Enforcement Officer together with the Zoning Permit to the applicant. The second copy of each application with accompanying plan shall become a public record.
- (4) **Water Supply and Sewage Disposal.** All structures with a water supply system shall connect to the Village's water supply system and sewage disposal system.
- (5) **Stormwater Runoff.** Drainage affecting adjacent properties shall be considered by the Code Enforcement Officer before issuing a Zoning Permit, including possible stormwater runoff to said properties.
- (6) **Issuance of Permits.** It shall be the duty of the Code Enforcement Officer 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 are 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 Code Enforcement Officer 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. The applicant may appeal to the Zoning Board of Appeals for a reversal of the Code Enforcement Officer's decision.
- (8) **Expiration of Zoning Permit.** A Zoning Permit shall run concurrently with any building permit that is issued as part of the same application and shall expire when the building permit expires. If no building permit is issued, the Zoning Permit shall expire one year from the date of issue.
- (9) **Revocation of Permits.**
 - (a) If it shall appear, at any time, to the Code Enforcement Officer that the application or accompanying plot is in any material respect false or misleading, or that 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 Code Enforcement Officer.

- (b) When a Zoning Permit has been revoked, the Code Enforcement Officer may, at his discretion, re-issue the Zoning Permit, after he is satisfied that the work will comply with the Permit as originally issued. Before re-issuing the Zoning Permit, the Code Enforcement Officer may require the applicant to file an indemnity bond in the favor of the Village 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 Decision.** The Code Enforcement Officer shall file in his/her office a copy of each decision, determination, interpretation, order, and/or requirement that he/she makes, within five business days from the day it is rendered. A copy of such decision shall be filed with the Village Clerk simultaneously.

(C) Certificates of Zoning Compliance

- (1) No land shall be occupied or used and/or no change in use shall occur until a Certificate of Zoning Compliance shall have been issued by the Code Enforcement Officer.
- (2) The applicant shall apply for Certificate of Zoning Compliance within fifteen (15) days of completion of the structure, alteration, or other work.
- (3) Said Certificate of Zoning Compliance shall be issued by the Code Enforcement Officer within thirty (30) days after the application is received, if the CEO finds that all work has been completed in compliance with the provisions of this zoning law. The Certificate of Zoning Compliance shall state that all work completed is in compliance with the provisions of this law, and shall reference any variances or other permits that may have been issued.

Section 10.3 Certificates of Occupancy

- (A) No building shall be occupied or used, or have a change in use, until a Certificate of Occupancy, in compliance with Local Law No. 1-1986 of the Village of Allegany and in compliance with this local law, shall have been issued by the Building Official. The Certificate of Occupancy shall state that the building or buildings comply with the provisions of the New York State Building Code.

(B) Certificates of Occupancy shall be applied for:

- (1) All new construction.
- (2) Each and every change in use. For purposes of this local law, a change from an owner-occupied dwelling to a rental shall be considered to be a change in use.
- (3) Each and every change in tenancy and/or change in ownership.

Section 10.4 Violations and Penalties**(A) Enforcement Official**

- (1) Any violation of this local law is an offense punishable by a fine not to exceed the sum of \$250.00. Each week that a violation continues shall constitute a separate offense.
- (2) The Code Enforcement Officer (CEO) is hereby designated as the Village official who is charged with the administration and enforcement of this local zoning law. The CEO is authorized to make inspections of property, to respond to complaints, to issue Notices of Violations and to issue Appearance Tickets, where necessary to enforce the provisions of this zoning law.

(B) Complaints of Violations

- (1) Any person may file a complaint with the Code Enforcement Officer that a violation of this law may have taken place or is allegedly taking place. All complaints shall be in writing and shall specify the property on which the alleged violation has occurred.
- (2) The Code Enforcement Officer shall record and investigate any such written complaint.
- (3) The Code Enforcement Officer may also investigate any alleged violation that he or she has reason to believe has occurred or is occurring.
- (4) The Code Enforcement Officer shall report all alleged violations, his/her investigations and his/her determinations to the Village Board of Trustees. This report shall be made monthly, or at such interval as the Village Board shall determine.

(C) Inspection

- (1) Whenever a complaint has been filed, or whenever it shall appear that the provisions of this local law are being violated, the Code Enforcement Officer, shall investigate the complaint. Except in cases where the alleged violation is in plain view and/or where no entry is necessary, or except in cases where an imminent peril exists, the CEO shall obtain approval from an owner, lessee, agent, tenant, or other person with authority, to make an inspection of the property.

- (2) Following the inspection of the property, the Code Enforcement Officer shall file a written report, which details the findings of his/her inspection, with the Village Clerk. If the inspection was the result of a complaint, a copy of the report shall be sent to the person who filed the complaint.

(D) Notice of Violation

- (1) If the Code Enforcement Officer finds that a violation of this local law exists on the property, he/she shall prepare a written Notice of Violation which shall contain the following information:
 - (a) The name of the owner or occupant to whom the Notice is addressed
 - (b) The location of the premises involved in the violation
 - (c) A statement describing the condition of the premises at the time of the inspection, and showing in which way the premises is in violation of this local law
 - (d) A demand that the violation be remedied to comply with this local law. The Notice shall set a reasonable timeperiod for compliance. (For example, within 15 days of the date of the Notice of Violation.)
 - (e) A statement that a failure to comply with the demand may result in prosecution.
- (2) The Notice of Violation shall be served by personal service or by certified mail, return receipt requested, addressed to the last known address of the property owner or occupant.
- (3) **Extension.** Upon application of the owner or occupant showing reasonable cause, the Code Enforcement Officer may grant an extension of up to thirty days for the owner or occupant to comply with the Notice of Violation.

(E) Appearance Ticket

If, after the expiration of the timeperiod specified in the Notice of Violation, or after the completion of any extension period, the owner or occupant shall fail to comply with the requirements of this law, the Code Enforcement Officer or Village Board may institute enforcement procedures as follows:

- (1) The Code Enforcement Officer is hereby authorized, pursuant to Criminal Procedure Law Section 150.20 (3), to issue an appearance ticket to any person whom the enforcement officer has reason to believe has violated this law, and shall cause such person to appear before the village court.
- (2) After the appearance ticket has been issued, the Code Enforcement Officer shall file an Information and Supporting Deposition with the local justice.

(F) Other Remedies

- (1) In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used, or any land is divided into lots, blocks or sites in violation of this local law, the Village Board of Trustees, in addition, to other remedies, may institute any appropriate action or proceedings to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use, to prevent the occupancy of said building, structure or land or to prevent any illegal act, conduct, business or use in or about such premises.
- (2) The Village Board reserves the right to seek a court order to have the violation corrected by the Village. The expense thereof shall be charged to the property so affected by including such expense in the next annual tax levy against the property.

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

Section 10.5 Fees

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

Section 10.6 Article Seventy-eight Proceedings

Any person or persons, jointly or severally aggrieved by any decision of the Village Board, Zoning Board of Appeals, the Planning Board or any officer, department, board or bureau of the Village, 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 Village Clerk.

ARTICLE XI

ZONING BOARD OF APPEALS

Section 11.1 Organization

(A) Appointment

- (1) Pursuant to the provisions of Village Law of the State of New York, the mayor of the Village of Allegany, subject to the approval of the Board of Trustees, shall appoint a Zoning Board of Appeals consisting of five members. The Zoning Board of Appeals existing as of the date of the adoption of this local law shall continue and shall be deemed appointed in accordance with the provisions of law and in accordance with the terms heretofore made.
- (2) 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. The terms of office shall expire at the end of the village's official year. No member of the Zoning Board of Appeals shall simultaneously hold other elective office in the village government.
- (3) The Mayor shall designate the chairperson of the Zoning Board of Appeals, subject to the approval of the Board of Trustees. 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 Village Board of Trustees 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 Village Board may establish minimum requirements for attendance at Zoning Board of Appeals meetings.

(D) Removal from Office

The Mayor 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 Village Board of Trustees by local law.

(E) Expenses

The Village 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, not to exceed the appropriations made by the Village Board of Trustees.

Section 11.2 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 Code Enforcement Officer 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) Decide any question involving the interpretation of any provision of this local law, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.
- (4) Hold public hearings and approve or disapprove each application for a use or area variance, as defined in this local law.
- (5) 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 approval. Prior to a public hearing on this issue, the Code Enforcement Officer shall pursue abatement of the failure to comply as a violation in accordance with Article X of this 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.

(A) 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.

(B) Assistance to Board of Appeals

- (1) The Zoning Board of Appeals shall have the authority to call upon any department, agency or employee of the Village for such assistance as shall be deemed necessary and as shall be authorized by the Village Board.
- (2) For unique or large-scale projects, the Zoning Board of Appeals, upon approval from the Village Board of Trustees, may retain qualified expert consultants to assist the Board of Appeals in its review of the application; the cost of such consultant(s) shall be paid by the applicant.

Section 11.3 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 Village of Allegany, 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

- (1) 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.
- (2) The applicant shall comply with all conditions of approval prior to the issuance of a Certificate of Zoning Compliance. However, the Zoning Board of Appeals may authorize the Code Enforcement Officer to issue a temporary Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. The Board of Appeals shall establish a maximum period of time during which the temporary Certificate of Zoning Compliance is valid. The issuance of a temporary Certificate of Zoning Compliance may be warranted, for example, in cases where the timing of the completion of construction

does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved special use permit. The sufficiency of such performance bond shall be determined by the Village Board, after consultation with the Board of Appeals, Village Engineer, Village Attorney, Code Enforcement Officer, and/or other appropriate parties.

(D) Expiration of Grant of Variance

A variance shall expire within six months of the date of approval, if the applicant has not commenced construction on the project within that time or if use of the property in accordance with the grant of variance has not been commenced, in cases where construction is not needed. The Zoning Board of Appeals may grant extensions of up to one additional year, upon written application prior to the expiration of the original variance approval. Applicant shall provide a rational basis as to why he/she was not able to begin the project.

A use variance shall expire if the use of the property in accordance with the grant of variance shall cease continuously for six months.

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 11.4 Procedures

(A) Filing of Appeals

- (1) Any party aggrieved by a decision of the Code Enforcement Officer shall file a notice of appeal within sixty (60) days from the date of the filing of any order, requirement, decision, interpretation or determination by the Code Enforcement Officer in the office of the Village Clerk.
- (2) All appeals shall be in writing, on forms prescribed by the Zoning Board of Appeals, 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.
- (3) All appeals shall be filed with the Village Clerk. Upon receipt of the notice of appeal, together with all required application material, the Clerk shall transmit the notice of appeal and application materials to the Zoning Board of Appeals and to the Code Enforcement Officer. The C.E.O. shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record upon which the action appealed from was taken.

(B) Required Application Materials

Any appeal or application for a use or area variance shall contain the information specified below for the corresponding type of application. The Zoning Board of Appeals may require additional information, if a particular application so warrants. The Zoning Board of Appeals may waive any particular application requirement that it deems is not relevant to an individual application.

The applicant shall submit a sufficient number of copies of all required materials to facilitate review by the Zoning Board of Appeals and staff, in addition to one required public review set of materials. The Code Enforcement Officer shall determine the required number of copies.

(1) Appeal from interpretation or determination

Any appeal of the Code Enforcement Office's interpretation of the Zoning Law or other determination shall include the following information:

- (a) The name and address of the applicant.
- (b) The tax map number and the street address of the lot that is the subject of the application, if applicable. The name and address of the owner of the lot in question, if the applicant is not the property owner.
- (c) A description of the interpretation or determination that is being appealed, and a statement explaining why the applicant feels this interpretation or determination is not correct.
- (d) All required fees.

(2) Application for a Use Variance

- (a) The name and address of the applicant.
- (b) The name and address of the owner of the lot that is the subject of the application, if the applicant is not the property owner. If an applicant is applying for a variance on a lot that he/she does not own, the property owner shall also sign the application.
- (c) The tax map number and the street address of the lot that is the subject of the application.
- (d) The zoning classification of the lot and its present use. A description of the proposed use, if different from the current use.
- (e) If construction is proposed, a reasonably accurate description of the present buildings and any other 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.

- (f) A statement explaining the reasons why the applicant believes the variance should be granted. The applicant should address the four tests itemized in Section 11.3(A) of this local law.
- (g) All required fees.

(3) Application for an Area Variance

- (a) The name and address of the applicant.
- (b) The name and address of the owner of the lot that is the subject of the application, if the applicant is not the property owner. If an applicant is applying for a variance on a lot that he/she does not own, the property owner shall also sign the application.
- (c) The tax map number and the street address of the lot that is the subject of the application.
- (d) The zoning classification of the lot and its present use. A description of the proposed use, if different from the current use.
- (e) A plot plan of the lot, indicating the location and size of the lot and size of the improvements thereon and proposed to be erected thereon. The plot plan shall be drawn to scale, and the dimensions of the lot, buildings and setbacks shall be accurately shown on the plot plan. The plot plan shall generally indicate the types of materials to be used.
- (f) A statement explaining the reasons why the applicant believes the variance should be granted. The applicant should address the five tests itemized in Section 11.3(B) of this local law.
- (g) All required fees.

(C) Request for Interpretation

Any Village board, agency, or official, or any individual, may request an interpretation of any portion of this zoning law. Such request shall be made in writing and shall detail the specific section of the zoning law for which clarification or interpretation is requested. The Zoning Board of Appeals shall consider the request for clarification at its next meeting, or the earliest meeting which allows full compliance with all the notification and other public hearing requirements of this law. The determination of the Board of Appeals shall be filed according to the requirements of this law.

(D) Public Hearing

- (1) Before acting on any matter, the Zoning Board of Appeals shall hold a public hearing. The public hearing shall be held within 62 days of the date that the complete notice of appeal and application are filed with the Clerk. The Zoning Board of Appeals shall determine when the application is complete.
- (2) Notice of the public hearing for a **use variance** shall be published in the following ways:
 - (a) The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.
 - (b) The applicant shall provide notice of the public hearing to the owner(s) of every parcel located wholly or partially within two hundred fifty (250) feet of the perimeter of the property that is the subject of the application. The applicant shall also provide a notice to such other interested persons as the Chairperson of the Zoning Board of Appeals may direct. Such notices shall be provided at least ten (10) days prior to the public hearing. All such notification shall be given by and at the expense of the applicant, in such manner as shall be determined by the Chairperson of the Board of Appeals. The applicant shall submit to the Zoning Board of Appeals a list of persons who are required to receive a notice of the public hearing and an affidavit that the notice was provided to everyone on the list; such list and affidavit shall be submitted at or prior to the public hearing.
 - (c) For all appeals that meet the requirements contained in Article XIV 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 and shall be accompanied by a full statement of the application.
 - (d) Content of Notice: The notice of the public hearing shall contain the date, time, and place (including street address) of the public hearing; the name of the public body that is conducting the public hearing; the name of the applicant, the address of the property that is the subject of the application or other identifying information (tax map number, for example); and a brief description of the proposed project. The notice shall also state where and when the public can receive more information about the application (i.e. by calling the village hall during stated office hours.)
- (3) Notice of the public hearing for an **area variance** shall be published in the following ways:
 - a. The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.

- b. The applicant shall provide a notice of the public hearing to all owners of property that adjoins the lot that is the subject of the appeal. "Adjoin" shall include property that is across the street, alley or any other public way from the property for which the variance is sought. The applicant shall also provide a notice to such other interested persons as the Chairperson of the Zoning Board of Appeals may direct. Such notices shall be provided at least ten (10) days prior to the public hearing. All such notification shall be given by and at the expense of the applicant, in such manner as shall be determined by the Chairperson of the Board of Appeals. The applicant shall submit to the Zoning Board of Appeals a list of persons who received the notice and an affidavit that the notice was provided to everyone on the list; such list and affidavit shall be submitted at or prior to the public hearing.
 - c. For all appeals that meet the requirements contained in Article XIV 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 and shall be accompanied by a full statement of the application.
 - d. Content of Notice: The notice of the public hearing shall contain the date, time, and place (including street address) of the public hearing; the name of the public body that is conducting the public hearing; the name of the applicant, the address of the property that is the subject of the application or other identifying information (tax map number, for example); and a brief description of the proposed project. The notice shall also state where and when the public can receive more information about the application (i.e. by calling the village hall during stated office hours.)
- (4) Notice of the public hearing for an interpretation of the zoning law, appeal of any determination of the Code Enforcement Officer, or any other matter referred to or considered by the Board of Appeals (other than a use or area variance), shall be published in the following ways:
- (a) The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.
 - (b) The Chairperson of the Zoning Board of Appeals may direct that a notice be mailed or provided individually to interested persons. In such case, the notice shall be mailed at least 10 days prior to the date of the public hearing and shall contain the information described in Section 11.4(B)(3)(d) of this local law.
- (5) At the public hearing any person may appear in person, or by agent or by attorney.

(E) Stay upon Appeal

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Code Enforcement Officer 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 a court of record on application, on notice to the Code Enforcement Officer and on due cause shown.

(F) 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 Code Enforcement Officer or to grant a use variance or area variance. However, if an application is referred to the Cattaraugus County Planning Board pursuant to Section 239m of New York State General Municipal Law and Article XIV of this local law, and if the County Planning Board recommends modification or disapproval of an application, the Zoning Board of Appeals shall not act contrary to such recommendation except by a vote of a majority plus one of all the members.
- (2) All deliberations and decisions of the Zoning Board of Appeals shall occur in a open public meeting, to the extent required by the New York State Open Meetings Law.
- (3) 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.
- (4) The Code Enforcement Officer 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.

(G) Filing Of Decisions and Notice To The Applicant

- (1) The Zoning Board of Appeals shall file every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Board of Appeals in the office of the Village Clerk within five (5) business days. Such decisions and determinations shall be a public record.
- (2) A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant within ten (10) business days of the decision. If the application is denied, the notice to the applicant shall state the reasons therefore. If the application is approved with conditions or modifications, the notice to the applicant shall specify all such conditions and modifications.
- (3) The Zoning Board of Appeals shall file a copy of all its decisions and determinations, with all conditions and modifications, in the office of the Code Enforcement Officer within five (5) business days of the decision/determination.

(H) 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.

(I) Abandoned Application

An application will be deemed abandoned and will be denied if there is no activity by the applicant on the application within six (6) months of the date of the initial notice of appeal or from the date that additional material or information is requested by the Zoning Board of Appeals, whichever is later. "No activity" means that the applicant is not diligently providing the Village with information necessary to proceed with review of the application, including materials and/or information that are required by this local law or by the requirements of the State Environmental Quality Review Act.

Section 11.5 Compliance with State Environmental Quality Review Act

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

ARTICLE XII SPECIAL USE PERMITS

Section 12.1 Purpose

The purpose and intent of the review of applications for Special Use Permits 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 comply with the objectives of this zoning law.

Section 12.2 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 VII and elsewhere in this law. After evaluating the application using the criteria established in this Article and considering the intent and purpose of this local zoning law, the Planning Board may approve, approve with conditions or disapprove the application for Special Use Permit.
- (B) If the application is approved, the Planning Board may impose any reasonable conditions related to the project that it feels are necessary to mitigate potential impacts to the neighborhood, to the Village 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 approve 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 specified herein for the original issuance of the special use permit involved.

Section 12.3 Application Materials

- (A) The application for special use permit shall contain the information and materials listed below. All maps shall include the name of the project, title of drawing, the name and address of the applicant, the person responsible for the preparation of the drawing, a north arrow, scale, and date. The applicant shall submit a sufficient number of copies of all

required materials to facilitate review by the Planning Board members and staff, in addition to one required public review set of materials. The Code Enforcement Officer shall determine the number of copies necessary.

(B) The application shall contain the following:

- (1) An application for a Zoning Permit.
- (2) A general description of the proposed project, including the nature of the use and the proposed hours of operation.
- (3) The tax map number of the parcel(s) on which the project will occur, and the name of the owner of record of that parcel(s). If the applicant is not the owner of record, the property owner shall also sign the application.
- (4) A plot plan, drawn to scale, showing the size and location of the lot, the location of all buildings on the lot, driveway entrances, parking areas, landscaping and any other proposed features.
- (5) A description of the proposed water supply, sewerage disposal and stormwater drainage facilities.
- (6) Environmental Assessment Form pursuant to the NYS Environmental Conservation Law, Part 617.
- (7) All required fees.
- (8) 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 12.4 Application Procedure

(A) Submission to Planning Board

An applicant for a Special Use Permit shall submit a completed application to the Code Enforcement Officer, who shall forward it to the Planning Board at its next regularly scheduled meeting.

(B) Coordination of Review

(1) Variances

If a variance is also required under the provisions of this law for an application, a separate application for said variance shall be made to the Zoning Board of Appeals. The Board of Appeals shall act on the application for a variance prior to the Planning Board's final action on the application for the Special Use permit.

(2) Site Plan Review

Where site plan review is also required by this zoning law, review of both the special use permit and site plan review shall proceed concurrently. However, the special use permit application shall be approved prior to final action on the application for site plan review. If the application for a special use permit is disapproved, the application for site plan review shall be deemed denied.

(C) Public Hearing

- (1) The Planning Board shall hold a public hearing on the application for special use permit within sixty-two (62) days from the date the complete application is received. The Planning Board shall determine when the application is complete.
- (2) Notice of the public hearing shall be published in the following ways:
 - (a) The Village shall publish a notice in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.
 - (b) The applicant shall provide notice of the public hearing to the owner(s) of every parcel located wholly or partially within two hundred fifty (250) feet of the perimeter of the property that is the subject of the application. The applicant shall also provide a notice to such other interested persons as the Chairperson of the Planning Board may direct. Such notices shall be provided at least ten (10) days prior to the public hearing. All such notification shall be given by and at the expense of the applicant, in such manner as shall be determined by the Chairperson of the Planning Board. The applicant shall submit to the Planning Board a list of persons who are required to receive a notice of the public hearing and an affidavit that the notice was provided to everyone on the list; such list and affidavit shall be submitted at or prior to the public hearing.
 - (c) For all applications that meet the requirements contained in Article XIV 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.
 - (d) Content of Notice: The notice of the public hearing shall contain the date, time and place (including street address) of the public hearing; the name of the public body that is conducting the public hearing; the name of the applicant, the address of the property that is the subject of the application, or other identifying information (tax map number, for example); and a brief description of the proposed project. The notice shall also state where and when the public can receive more information about the application (i.e. by calling the village hall during stated office hours).

(D) Decision

- (1) The Planning Board shall decide on the application within sixty-two (62) days of 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. However, if an application is referred to the Cattaraugus County Planning Board pursuant to Section 239m of New York State General Municipal Law and Article XIV of this local law, and if the County Planning Board recommends modification or disapproval of an application, the Planning Board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members.

(E) Filing of Decision

- (1) The Planning Board shall file a copy of its decision on the application with the Village Clerk within five (5) business days of the date of the decision.
- (2) The Planning Board shall mail a notice of its decision to the applicant within ten (10) business days of the date of the decision. If the application is denied, the notice to the applicant shall state the reasons therefore. If the application is approved with conditions or modifications, the notice to the applicant shall specify all such conditions and modifications.
- (3) The Planning Board shall file a copy of its decision, with all conditions and modifications, in the office of the Code Enforcement Officer within five (5) business days of the decision.

(F) Consultant Review

In reviewing any application for a special use permit, the Planning Board may consult with the C.E.O., Fire Chief, Department of Public Works, Cattaraugus County Planning Department, Soil Conservation Service, NYS Department of Transportation (DOT), NYS Department of Environmental Conservation (DEC), and other local, county or state agencies.

For unique or large-scale projects, the Planning Board, upon the approval of the Village Board of Trustees, may retain qualified expert consultants to assist the Planning Board in its review of the application; the cost of such consultant(s) shall be paid by the applicant.

Section 12.5 Compliance with Conditions of Approval

- (A) In approving a special use permit, the Planning Board may impose reasonable conditions, which are directly related to the application. Such conditions shall be consistent with the

intent and purposes of this zoning law and other applicable laws, the Village's Vision Statement, and other recognized Village planning policies.

- (B) The conditions to the Special Use Permit shall be included in the motion to approve the application.
- (C) No Certificate of Zoning Compliance shall be issued until all aspects of the approved special use permit have been completed, including any conditions of approval. However, the Planning Board may authorize the Code Enforcement Officer to issue a temporary Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. The Planning Board shall establish a maximum period of time during which the temporary Certificate of Zoning Compliance is valid. The issuance of a temporary Certificate of Zoning Compliance may be warranted, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved special use permit. The sufficiency of such performance bond shall be determined by the Village Board, after consultation with the Planning Board, Village Engineer, Village Attorney, Code Enforcement Officer, and/or other appropriate parties.

Section 12.6 Criteria for Granting Special Use Permits

When making a decision to approve, approve with conditions, or disapprove a special use permit, the Planning Board shall consider the following criteria. In approving a special use permit, the Planning Board shall find that the project meets all these criteria, or can be modified or conditioned to bring it into compliance with the criteria. In this latter case, the conditions of approval shall be part of the approved special use permit.

The Planning Board shall find that:

- (A) The proposed project is in harmony with the general purposes and intent of this zoning law and other applicable laws, the Village's Vision Statement and any other applicable, recognized Village planning policies.
- (B) The nature, intensity, size and location of the proposed use is in harmony with the character of the surrounding neighborhood and the proposed use will not adversely affect the neighborhood.
- (C) The proposed use will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use and will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Village.
- (D) The size and location of the site are adequate for the use proposed.

- (E) The proposed use will not generate excessive noise, odor, dust, smoke or vibrations.
- (F) The proposed use will not unduly increase traffic volumes or unduly affect traffic flow or safety for pedestrians or vehicles. The capacity of the existing street system is adequate to handle the anticipated traffic from the proposed project.
- (G) Essential infrastructure and community services, such as police and fire protection, water supply and sewerage disposal systems, exist to adequately serve the proposed use or will be provided on-site by the applicant.
- (H) The proposed project is adequately screened from adjacent properties, if screening is appropriate.
- (I) The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic feature of major significance.
- (J) The proposed project conforms to all applicable requirements of this zoning law.

Section 12.7 Abandoned Application

An application will be deemed abandoned and will be denied if there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material or information is requested by the Planning Board, whichever is later. "No activity" means that the applicant is not diligently providing the Village with information necessary to proceed with review of the application, including materials and/or information that are required by this local law or by the requirements of the State Environmental Quality Review Act.

Section 12.8 Expiration of Special Use Permit

A Special Use Permit shall expire six months from the date of approval, if the applicant has not commenced construction on the project within that time, or if use of the property in accordance with the grant of Special Use Permit has not commenced, in cases where construction is not part of the project. The Planning Board may grant an extension for up to one additional year, upon written application by the applicant prior to the expiration of the Special Use approval. Applicant shall provide a rational basis as to why he/she was not able to begin the project.

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 six months.

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 12.9 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 Code Enforcement Officer shall pursue abatement of the failure to comply as a violation in accordance with Article X of this local law.

Section 12.10 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 XIII SITE PLAN REVIEW

Section 13.1 Intent and Purpose

The intent of site plan review is to promote the health, safety and general welfare of the Village of Allegany. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the Village, and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the Village and the general welfare of its inhabitants.

The purpose of this article is to set forth standards for the review of site plans applying to certain uses and activities. The nature of these uses and activities requires special consideration of their impacts upon surrounding properties, the environment, community character and the ability of the Village to accommodate development.

An additional purpose of this article is to ensure that any new development, substantial redevelopment, or change of use in the Village of Allegany is in harmony with the character of the village and to minimize potential conflicts between future development and existing neighboring uses.

Section 13.2 Function

Site Plan Review is a regulatory planning technique which requires municipal approval of the arrangement, layout and design of the proposed use, when development occurs on a single parcel of land which is not intended to be subdivided.

This review process allows the Village of Allegany to analyze new development proposals in terms of their impacts on local growth and the need for facilities and services. It also provides an effective way to insure that when new development, or redevelopment, occurs, it will be consistent with the Village's Vision Statement and planning and development goals and will be in harmony with the character of the area in which it is located. It is a means to identify those new developments or redevelopment that may present problems or opportunities to the village and address them before development occurs.

Section 13.3 Authorization

- (A) The Planning Board of the Village of Allegany is hereby authorized to review and approve, approve with conditions, or disapprove site plans. When reviewing a site plan application, the Planning Board shall consider the plan elements and findings contained in Section 13.7: 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 13.8: Criteria for Approving Site Plans.

Section 13.4 Applicability

- (A) Prior to the issuance of a building permit or zoning permit in any zoning district, a project shall require site plan approval in accordance with the provisions of this article. All new land use activities, and any change in use, shall require site plan review and approval, including new structures, new uses, expansions of existing structures, excavation operations, and legal conversions of existing buildings to other uses, except those activities specifically exempted below.

(B) **Exempted Uses**

The following land use activities are exempted from the requirement for site plan review and approval:

- (1) One-family or two-family dwellings in the R-1 and R-2 Zoning Districts only, including ordinary accessory structures and related land use activities. Additions, of any size, to existing one-family and two-family dwellings in the R-1 and R-2 Districts are also exempt from site plan review.
- (2) Landscaping, gardening or grading that is not intended to be used in connection with a land use reviewable under the provisions of this Zoning Law.
- (3) Ordinary repair or maintenance to existing structures.
- (4) Interior structural alterations that do not change the use according to the New York State Building Code.
- (5) Exterior alterations or additions to existing structures that would not increase the square footage of the existing structure by more than thirty-three (33) percent.
- (6) The sale of agricultural produce and temporary structures related to the sale of agricultural produce.
- (7) Signs, except for signs that are included in projects that would otherwise require site plan review.
- (8) Home based businesses.

- (9) Accessory structures, including fences, unless the fence or other accessory structure is part of a project that is subject to site plan review.

(C) Change in Use

All changes in use shall require site plan review and approval, unless the new use is exempted in Section 13.4(B) of this local law. A Change in Use shall be considered to occur under any of the following circumstances:

- (1) There is a change from one type of use to another type of use either as identified in Chapter 3, Use and Occupancy Classification of the International Building Code or as identified in Table 7.1, Table of Permitted Uses of this local law. For purposes of this local law, a use identified in the Building Code shall mean each use that is specifically delineated in Section 303, Assembly Group A; Section 304 Business Group B; Section 305, Educational Group E; Section 306, Factory Group F; Section 308, Institutional Group I; Section 309, Mercantile Group M; Section 310, Residential Group R; Section 311, Storage Group S and Section 312, Utility and Miscellaneous Group U, including sub-sections and individual uses listed in each referenced Section.
- (2) The clearing, excavation or grading of more than 350 square feet of land on an existing commercial or industrial parcel.
- (3) The addition of four or more parking spaces.

Section 13.5 Application Materials

- (A) The application for site plan review shall contain the information and materials listed below. If a sketch plan conference is held, the necessary application materials will be determined by the Planning Board at that conference. The formal Site Plan that is submitted for approval shall be prepared by and have the signature and seal of a licensed engineer, architect, landscape architect or surveyor, as appropriate. All maps shall include the name of the project, title of the drawing, the name and address of the applicant, the person responsible for the preparation of the drawing, a north arrow, scale, and date. The applicant shall submit a sufficient number of copies of all the required materials to facilitate review by the Planning Board members and staff, in addition to one required public review set of materials. The Code Enforcement Officer shall determine the number of copies necessary.
- (B) The site plan application shall include the following:
 - (1) An application for a Zoning Permit
 - (2) The name, address, and contact information of the applicant. The tax map number of the parcel(s) on which the project will occur, and the name of the owner of record of that parcel(s). If the applicant is not the owner of record, the property owner shall also sign the application.

- (3) An area map showing:
 - (a) The applicant's entire holdings, including lot size, and existing zoning
 - (b) All adjacent properties, with tax map numbers
 - (c) Adjacent streets, roadways and sidewalks
- (4) A legal description of the property, including a survey prepared by a licensed land surveyor.
- (5) A site plan that shows:
 - (a) The location, dimensions, and use of all existing and proposed buildings
 - (b) Means of access and egress
 - (c) All parking facilities and loading areas
 - (d) Physical features intended to protect adjacent land uses, including screening, fencing, landscaping and buffer areas.
 - (e) Existing natural features, such as wetlands, water bodies, watercourses, floodplain areas, and wooded areas.
 - (f) Internal streets, driveways, loading and stacking areas
 - (g) Sidewalks and crosswalks
- (6) A map showing the access route for emergency vehicles from the buildings on the site to the fire hall.
- (7) A map showing the lines of existing and proposed streets, crosswalks and sidewalks, immediately adjoining and within the proposed site, showing pedestrian and vehicular access, and the names of all proposed streets.
- (8) Floor plans and elevations showing all architectural features, including materials to be used, colors, type of construction, and exterior dimensions.
- (9) Location of outdoor storage, if any.
- (10) Grading and drainage plan
- (11) Water supply plan, including location of fire lanes and hydrants.
- (12) Location of sewer tie-in.
- (13) Location and design of energy distribution facilities, including electricity and gas.
- (14) Location and design of outdoor lighting facilities.
- (15) Location, size and design and type of construction of all proposed signs.
- (16) 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.
- (17) Landscaping plan and planting schedule, including location, type and size of existing trees and vegetation, identifying those to be preserved, and the location, type and size of trees, vegetation and other amenities to be provided.
- (18) An estimated project construction schedule.
- (19) Identification of any County, State or Federal permits required for the project.
- (20) Description of proposed operations, including the nature and intensity of the operation and the number of shifts and employment per shift.
- (21) Description of the nature and intensity of the proposed operation and its compatibility with surrounding development. Description of the means by which surrounding properties will be protected from any objectionable effects, such as traffic, noise, glare, dust, vibration, fire hazards, air pollution, water pollution, and soil erosion.
- (22) Environmental Assessment Form pursuant to NYS Environmental Conservation Law, Part 617.

(23) All required fees.

The Planning Board may require any additional information on elements integral to the proposed development that the Board deems is necessary for an adequate assessment of a particular application.

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

Section 13.6 Application Procedure

(A) Submission to Planning Board

An applicant for Site Plan Review shall submit a completed application to the Code Enforcement Officer (C.E.O.). The C.E.O. shall present it to the Planning Board at its next regularly scheduled meeting. The applicant may attend the meeting to answer questions concerning the application.

(B) Coordination of Review

(1) Variances

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. However, the Planning Board may conduct a preliminary review of the application for site plan review, prior to final action by the Zoning Board of Appeals.

(2) Special Use Permits

Where a special use permit is also required by this zoning law, review of both the special use permit and site plan review shall proceed concurrently. However, the special use permit application shall be approved prior to final action on the application for site plan review. If the application for special use permit is denied, the application for site plan review shall be deemed denied, and the applicant shall be notified of this determination.

(3) Integration of Procedures

Whenever an application for site plan review also requires the grant of a variance or special use permit, the Planning Board shall attempt to integrate, as appropriate, the submission requirements and review procedures for such other permits.

(C) Sketch Plan Conference

A sketch plan 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 sketch plan 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.

In order to accomplish these objectives, the applicant should provide the following information at the sketch plan conference:

- (1) A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, existing and proposed vegetation, and other planned features. In addition, anticipated changes in the existing topography and natural features and, where applicable, measures and features to comply with flood hazard and flood insurance regulations should be shown.
- (2) A sketch or map of the area which clearly shows the location of the site with respect to nearby street rights-of-way, easements, and other pertinent features.
- (3) A topographic or contour map of adequate scale and detail to show site topography, if applicable to the site plan.

(D) Public Hearing

- (1) The Planning Board may hold a public hearing on the site plan application. A public hearing shall be held if it is considered desirable by a majority of the Planning Board members. If a public hearing is held, it shall be conducted within sixty-two (62) days from the date that the complete application is received.
- (2) If held, notice of the public hearing shall be published in the following ways:
 - (a) By publication in a newspaper of general circulation in the Village at least five days prior to the date of the public hearing.
 - (b) The applicant shall provide notice of the public hearing to the owner(s) of every parcel located wholly or partially within two hundred fifty (250) feet of the perimeter of the property that is the subject of the application. The applicant shall also provide a notice to such other interested persons as the Chairperson of the Planning Board may direct. Such notices shall be provided at least ten (10) days prior to the public hearing. All such notification shall be given by and at the expense of the applicant, in such manner as shall be determined by the Chairperson of the Planning Board. The applicant shall submit to the Planning Board a list of persons who are required to receive a notice of the public hearing and an affidavit

that the notice was provided to everyone on the list; such list and affidavit shall be submitted at or prior to the public hearing.

- (c) For all applications that meet the requirements contained in Article XIV of this Zoning 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.
- (d) Content of Notice: The notice of the public hearing shall contain the date, time and place (including street address) of the public hearing; the name of the public body that is conducting the public hearing; the name of the applicant, the address of the property that is the subject of the application, or other identifying information (tax map number, for example); and a brief description of the proposed project. The notice shall also state where and when the public can receive more information about the application (i.e. by calling the village hall during stated office hours).

(E) Decision

- (1) The Planning Board shall decide on the application within sixty-two (62) days after the date of the public hearing, if a public hearing is conducted, or within sixty-two (62) days from the receipt of a complete application, if no public hearing is held. The Planning Board shall determine when the application is complete. The time within which the Planning Board must 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 is needed to approve an application. However, if an application is referred to the Cattaraugus County Planning Board pursuant to Section 239m of New York State General Municipal Law and Article XIV of this local law, and if the County Planning Board recommends modification or disapproval of an application, the Planning Board shall not act contrary to such recommendation except by a vote of a majority plus one of all the members.

(F) Filing of Decision

- (1) The decision of the Planning Board shall be filed in the office of the Village Clerk within five business days after such decision.
- (2) A notice of the decision shall be mailed to the applicant. If the application is denied, the notice to the applicant shall state the reasons therefore. If the application is approved with conditions or modifications, the notice to the applicant shall specify all such conditions and modifications.

- (3) The Planning Board shall file a copy of the decision, with all conditions and modifications, in the office of the Code Enforcement Officer within five (5) business days of the decision.

(G) Consultant Review

In reviewing any application for site plan approval, the Planning Board may consult with the C.E.O., Fire Chief, Department of Public Works, Cattaraugus County Planning Department, Soil Conservation Service, State Department of Transportation (DOT), State Department of Environmental Conservation (DEC), and other local, county or state agencies.

For unique or large-scale projects, the Planning Board, upon the approval of the Village Board of Trustees, may retain qualified expert consultants to assist the Planning Board in its review of the application; the cost of such consultant(s) shall be paid by the applicant.

Section 13.7 Compliance with Conditions of Approval

- (A) In approving a Site Plan, the Planning Board may impose reasonable conditions or modifications to the application, which may limit the use and occupancy of the land or the proposed buildings. Such conditions and modifications shall be consistent with the intent and purposes of this zoning law and other applicable laws, the Village's Vision Statement, and other recognized Village planning policies.
- (B) The conditions and/or modifications to the Site Plan shall be included in the motion to approve the Site Plan. Modifications in the Site Plan may also be indicated in writing on the Site Plan documents.
- (C) No Certificate of Zoning Compliance shall be issued until all aspects of the approved site plan have been completed, including any modifications to the site plan and any conditions of approval. However, the Planning Board may authorize the Code Enforcement Officer to issue a temporary Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. The Planning Board shall establish a maximum period of time during which the temporary Certificate of Zoning Compliance is valid. The issuance of a temporary Certificate of Zoning Compliance may be warranted, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved site plan. The sufficiency of such performance bond shall be determined by the Village Board, after consultation with the Planning Board, Village Engineer, Village Attorney, Code Enforcement Officer, and/or other appropriate parties.

Section 13.8 Criteria for Approving Site Plans

When making a decision to approve, approve with conditions and/or modifications, or disapprove a Site Plan, the Planning Board shall consider the following criteria. In approving a Site Plan, the Planning Board shall find that the project meets all these criteria, or can be modified or conditioned to bring it into compliance with the criteria. In this latter case, conditions of approval or modifications to the proposal shall be part of the approved, modified Site Plan.

The Planning Board shall find that:

- (A) The proposed project is consistent with the intent and purposes of this zoning law and other applicable laws, the Village's Vision Statement, and other recognized Village planning policies.
- (B) The proposed project conforms to all applicable requirements of this zoning law.
- (C) The proposed project is compatible with the natural features of the site and with the existing character of the neighborhood.
- (D) Adequate services and utilities will be available prior to occupancy.
- (E) The proposed Site Plan is consistent with the following standards:
 - (1) The scale of the proposed development is compatible with the existing character of the neighborhood.
 - (2) Location, size, massing, arrangement, and design of the proposed buildings and other structures are compatible with the existing development in the surrounding area and with established community guidelines, including the compatibility of the proposed architectural features, colors and materials.
 - (3) Location, design, massing, architectural characteristics and height of buildings, walls and fences will not discourage the appropriate development and use of adjacent land and buildings, or impair their value.
 - (4) The location, size, nature and intensity of the operations involved, and the size of the site in relation to the proposed use are compatible with the orderly development of the District.
 - (5) Adequacy of off-street parking arrangements, both in terms of number of spaces and their arrangement on the lot. In general, parking areas are encouraged to be placed behind or to the side of the primary buildings, with the buildings closer to the street.
 - (6) Adequacy and arrangement of pedestrian access and circulation, control of intersections with vehicular traffic, and overall pedestrian convenience.

- (7) Adequacy of the vehicular access to and egress from the site, and adequacy and arrangement of the internal vehicular circulation on the site.
 - (8) Location, arrangement, appearance and sufficiency of off-street loading facilities. Loading docks and doors shall not be permitted at the front of a building, and shall be screened from view.
 - (9) Adequacy, type, and arrangement of trees, shrubs, walls, fencing and other landscaping features that constitute a visual and/or noise buffer between the site and adjacent land uses. The retention of existing major vegetation is encouraged.
 - (10) Adequacy of landscaping plan. In general, species that tolerate low maintenance are preferred.
 - (11) Size, design, number, placement and arrangement of signs.
 - (12) Adequacy, location and design of lighting. Lighting shall be designed so that it does not spill over to adjacent properties. The minimum level of lighting for safety and visibility shall be approved. Pedestrian-scale lighting is encouraged.
 - (13) Adequacy of storm water and drainage facilities.
 - (14) Adequacy of the water supply and sewage disposal systems.
 - (15) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (F) If the proposed project is located in a floodplain, the proposal conforms to all requirements of the Village's Flood Damage Prevention and Control Law.
- (G) The proposed project will not be hazardous to the neighborhood and will not be a detriment to the community by causing a significant increase in noise, traffic, odor, glare, unsightliness or nuisances.
- (H) Solar access on adjacent or neighboring properties that contain solar facilities is protected.
- (I) If the project is an apartment complex or other multiple-family dwelling, the adequacy of usable open space for play areas and informal recreation, and access or proximity to retail goods and services.
- (J) Specific Standards for Shoreline Protection.
- (1) All construction on any shoreline lot shall be carried out in such a manner as to minimize interference with the natural course of such waterway, to avoid erosion of the shoreline, to minimize increased runoff of ground and surface water into the waterway, to remove only that vegetation which is necessary to the accomplishment of the project,

and to generally maintain the existing aesthetic and ecological character of the shoreline.

- (2) Any marina, boat service facility or any storage of petroleum products within two hundred (200) feet of the shoreline, or such other reasonable distance, as determined necessary by the Planning Board, shall include adequate provision for insuring that any leak, rupture or spill will be contained and not be introduced into or affect the adjacent waterway. In particular, a raised earthen or paved berm or dike shall be constructed in such a manner so as to afford adequate protection.
- (3) Any paved or otherwise improved parking, loading or service area within 200 feet of any shoreline shall be designed and constructed so as to minimize surface runoff and the entrance of any chemical pollutants or earthen siltation into the waterway.

Section 13.9 Amendment to Approved Site Plan

A new Site Plan application shall be submitted whenever a previously approved Site Plan is proposed to be changed or whenever there is a change of use, unless exempted in Section 13.4(B). The review for an amendment to a previously approved site plan shall be the same as that for a new application.

Section 13.10 Abandoned Application

An application will be deemed abandoned and will be denied if there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material or information is requested by the Planning Board, whichever is later. "No activity" means that the applicant is not diligently providing the Village with information necessary to proceed with review of the application, including materials and/or information that are required by this local law or by the requirements of the State Environmental Quality Review Act.

Section 13.11 Expiration of Site Plan Approval

Approval of the site plan shall expire six (6) months from the date of approval, if the applicant has not commenced construction on the project within that time or if use of the property in accordance with the Site Plan approval has not commenced, in cases where construction is not needed. Extensions of up to one additional year may be granted by the Planning Board, upon written application by the applicant. Applicant shall provide a rational basis as to why he/she was not able to begin the project.

Section 13.12 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 Code Enforcement Officer shall pursue abatement of the failure to comply as a violation in accordance with Article X of this local law.

Section 13.13 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 XIV REFERRAL

Section 14.1 Proposed Actions Subject to Referral

In accordance with the laws of New York State, the following proposed actions by the Village Board of Trustees, 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 14.2.

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 14.2 Geographic Criteria

The proposed actions set forth in Section 14.1 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 14.3 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 14.4 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.

ARTICLE XV AMENDMENTS

Section 15.1 Village Board May Amend

The Village 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 Village Law.

Section 15.2 Planning Board Review

Every such proposed amendment or change, whether initiated by the Village Board or by petition, shall be referred to the Village Planning Board for a report thereon prior to Village 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 Village Board, it shall be deemed that the Planning Board has approved the proposed amendment or change.

Section 15.3 Public Notice and Hearing

The Village 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 Village. 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 Village 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 Village Board.

Section 15.4 Adoption

(A) Any such amendments may be approved by a simple majority vote of the Village Board of Trustees, except that any such amendment shall require the approval of at least three-fourths of the members of the Village Board in the event such amendment is the subject of a written protest, presented to the Village 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.

(B) Prior to final action by the Village Board on the proposed amendment, it shall be referred to the Cattaraugus County Planning Board following the provisions of Section 239m of New York State General Municipal Law and Article XIV of this law. If the County Planning Board recommends modification or disapproval of an amendment, the Village Board shall not act contrary to such recommendation, except by a vote of a majority plus one of all the members.

Section 15.5 Filing Requirements

- (A) Amendments made to this law, excluding any map incorporated therein, shall be entered in the minutes of the Village 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 the official newspaper of the Village.
- (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 Village Clerk.
- (D) Affidavits of the publication of the summary and posting of the amendment shall be filed with the Village Clerk.
- (E) The Village 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.

Section 15.6 Compliance with State Environmental Quality Review Act

Prior to their final action on any amendment to this zoning law, the Village Board of Trustees shall fully comply with the provisions of the State Environmental Quality Review Act (SEQRA).

ARTICLE XVI SEPARABILITY

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

ARTICLE XVII EFFECTIVE DATE

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