

# **ARTICLE I GENERAL PROVISIONS**

## **Section 1.01 Enacting Clause**

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

## **Section 1.02 Short Title**

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

## **Section 1.03 Effective Date**

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

## **Section 1.04 Severability**

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

## **Section 1.05 Intent and Purpose**

### **(A) Intent**

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

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

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

**(B) Purpose**

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

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

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

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

## **Section 1.06 Interpretation**

### **(A) Minimum requirements**

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

### **(B) Relationship to other Laws**

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

## **Section 1.07 Application of Regulations**

**(A) Application.** Except as herein after provided:

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

### **(B) Responsibility**

The final responsibility for the conforming of buildings and use to the requirements of this Ordinance shall rest with the owner or owners of such buildings or use and the property on which it is located.

### **(C) Exemptions**

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

## **Section 1.08 Fees**

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

## **Section 1.09 Incentive Zoning**

### **(A) Purpose**

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

### **(B) Applicability**

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

### **(C) Allowable Amenities**

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

### **(D) Allowable Incentives**

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

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

**(E) Criteria and Procedure for Application Review**

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

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

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

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

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

**(G) Cash payment in lieu of amenity**

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