

ARTICLE V SUPPLEMENTAL REGULATIONS

Section 5.01 Application

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

Section 5.02 Temporary Structures and Uses

(A) Construction Trailers

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

(B) Temporary residential buildings

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

(C) Temporary Motor Vehicle Sales

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

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

(2) Temporary Special Use Permit

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

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

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

(f) Criteria for issuance of Temporary Special Use Permit

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

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

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

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

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

(3) Temporary Vehicle Sales Event Permit

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

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

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

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

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

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

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

(5) Violations

- (a) Failure to comply with the terms and conditions of a Temporary Vehicle Sales Event Permit and/or the requirements of this Section 5.02(C) may be grounds for immediate suspension of the event until such time as the noncompliance is remedied. Initially, the CEO shall verbally inform the on-site event manager of

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

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

Section 5.03 Lots of Record

(A) Lots of Record

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

(B) Contiguous Parcels

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

Section 5.04 Access to Street

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

Section 5.05 Height Regulations

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

Section 5.06 Setbacks and Required Yards

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

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

- (D) **Buffer Yards**

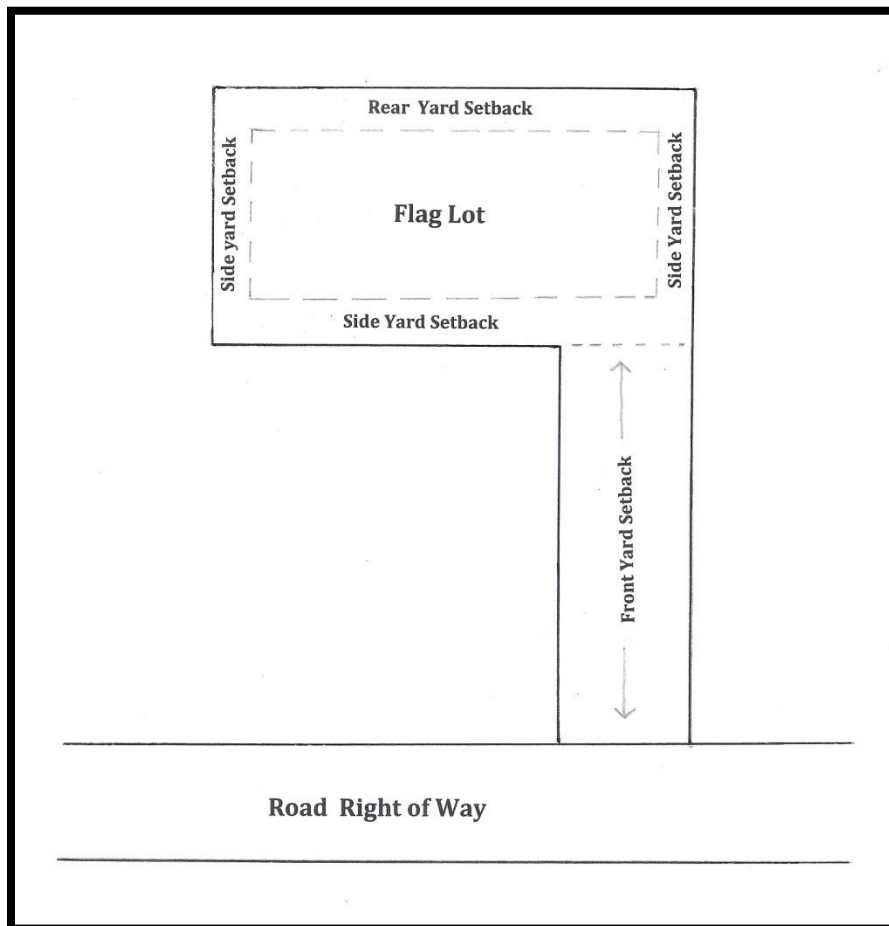
Where a commercial or industrial district abuts the R-1 District, a buffer yard of not less than 40 feet shall be required on the rear and side yards of the commercial or industrial property, between such use and the abutting residential district. Also See Section 5.15(B)(7).

- (E) **Flag lots**

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

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

Figure 1. Setbacks for Flag Lots



(F) Projections into Yards

The following projections shall be allowed within required yards:

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

(G) Sight Distance

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

Section 5.07 Minimum Lot Area

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

(D) Townhouses and Multiple Dwellings

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

(E) Two-family Dwellings

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

Section 5.08 Minimum Gross Floor Area

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

(A) Single-family Dwellings

- (1) In the R-1 and C-1 Zoning Districts a single-family residential dwelling unit shall:
 - (a) contain not less than 1,150 square feet of gross floor area for a one-story dwelling unit or not less than 1,400 square feet of gross floor area for a two-story dwelling unit.
 - (b) be built on a permanent foundation.
 - (c) have minimum width of twenty-four (24) feet.
 - (d) have a roof pitch of not less than 4 to 12.
 - (e) have an overhang of at least 8 inches.
- (2) In an A-F Zoning District a single-family residential dwelling unit shall contain not less than 800 square feet of gross floor area for a one-story dwelling unit or not less than 1,200 square feet of gross floor area for a two-story dwelling unit.

(B) Two-Family Dwellings

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

(C) Seasonal Dwellings

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

Section 5.09 Manufactured Home Regulations

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

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

(B) Manufactured Homes on Individual Lots

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

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

(C) Manufactured Home Parks

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

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

(D) Recreational Vehicles

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

(E) Dependent Manufactured Homes

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

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

Section 5.10 Home Occupations

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

(B) General Standards

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

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

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

(C) Minor Home Occupations

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

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

(D) Major Home Occupations

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

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

(E) Prohibited Home Occupations

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

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

Section 5.11 Auxiliary Dwelling Units

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

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

Section 5.12 Sign Regulations

(A) Intent

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

(B) Applicability

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

(C) Exempt Signs

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

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

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

(D) General Standards

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

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

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

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

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

Key to Schedule C:

P = Permitted with issuance of Sign Permit by CEO

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

NP= Not Permitted

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

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

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

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

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

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

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

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

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

(a) *Ground Sign*

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

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



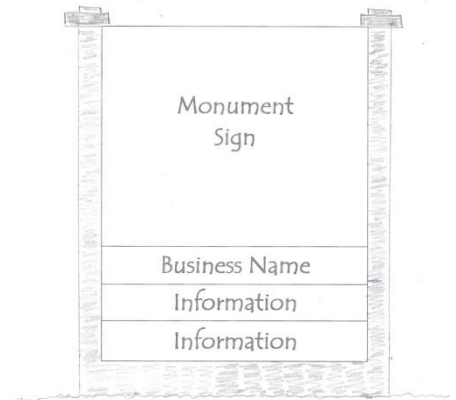
- iii. A Ground Sign shall have a maximum of two sign faces. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel, and are not more than 24 inches apart.

(b) *Monument Sign*

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

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

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

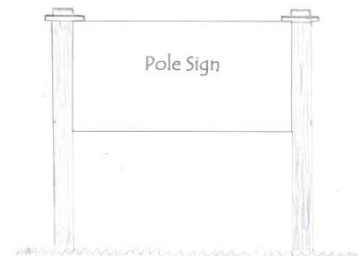


- iv. In addition to the setbacks in Schedule C, the sign shall be located a minimum of 40 feet from any lot in an R-1 Zoning District.

(c) *Pole Sign*

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

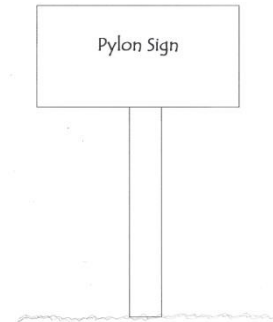
- ii. A Pole Sign shall not exceed 40 square feet in sign area.



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

(d) *Pylon Sign*

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



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

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

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

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

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

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

(b) *Wall Signs*

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

(c) *Projecting Signs*

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

(d) *Awning and Canopy signs*

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

(3) *Changeable Signs and Digital Displays*

(a) *Changeable Copy Signs*

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

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

(b) *Time and Temperature Signs*

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

(c) *Electronic Graphic Display Signs*

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

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

(4) ***Miscellaneous Signs***

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

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

(b) *Directional Signs*

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

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

(c) *Portable Signs*

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

(F) Off-Premises Signs

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

(1) *Outdoor Advertising Signs*

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

(2) *Billboards*

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

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

(G) Sign Permit Process

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

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

(H) Obsolete Signs

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

(I) Measurement Rules

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

Section 5.13 Off-Street Parking and Loading Regulations

(A) Applicability

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

(B) Parking Standards

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

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

(C) Off-Street Parking Requirements

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

(D) Loading Areas

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

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

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

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

Section 5.14 Landscaping Regulations

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

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

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

(B) Applicability of Landscaping Requirements

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

(C) Standards

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

(D) Fencing

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

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

- (2) Fencing shall not interfere with emergency vehicular access to a building or site.
- (3) All fences shall be maintained structurally and visually.

(E) Outdoor Storage

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

Section 5.15 Performance Standards for Commercial and Industrial Uses

(A) Intent

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

(B) Performance Standards

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

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

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

Section 5.16 Sanitation

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

Section 5.17 Junkyards and Storage of Junk

(A) Intent and Purpose

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

(B) Outdoor Storage of Junk

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

(C) Junkyards

(1) Special Use Permit Required

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

(2) Application Requirements

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

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

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

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

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

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

Section 5.18 Subsurface Rights

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

Section 5.19 Oil and Gas Production Facilities

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

Section 5.20 Mining

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

(A) Special Use Permit Required

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

(B) Application Requirements

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

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

(C) Standards

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

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

(D) Site Reclamation

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

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

(E) Exemption

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

Section 5.21 Adult Uses

(A) Intent and Purpose

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

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

(B) Special Use Permit Required

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

(C) Regulations

The following provisions shall apply to all adult uses:

(1) Location and Separation Distances

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

(2) Standards for adult uses

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

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

(3) Signage

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

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

(D) Other provisions

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

Section 5.22 Telecommunications Facilities

(A) Intent

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

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

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

(B) Applicability

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

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

(C) Co-location

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

(D) Special Use Permit Application

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

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

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

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

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

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

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

- (14) Application Fee

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

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

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

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

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

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

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

(F) Abandonment and Removal

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

(G) Periodic Inspection

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

Section 5.23 Multiple Dwellings and Townhouses

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

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

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

(A) Intent and Purpose

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

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

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

(B) Application Process

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

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

(C) Criteria for Approval

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

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

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

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

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

(11) ***Noise Standard***

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

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

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

(D) Abandonment of Use

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

(E) Assessment

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

(F) Planning Board Action

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

(G) Amendments to Approval

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

Section 5.25 Commercial Wind Energy Conversion Systems (WECS)

(A) Intent and Purpose

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

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

(B) Application Process

(1) Applicability

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

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

(2) Initial Application Materials

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

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

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

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

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

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

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

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

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

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

(4) SEQR Review

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

(C) Criteria for Approval

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

- (1) Setbacks. All commercial WECS shall comply with the following setbacks:
 - (a) All wind turbines and towers shall be set back from property lines a minimum of 1.5 times the height of the WECS, as defined in Article II. However, where adjoining lots are both part of the proposed project, this setback requirement shall not apply.
 - (b) All wind turbines and towers shall be set back a minimum of 2,500 feet from the boundaries of any R-1 or R-2 Zoning District.
 - (c) All wind turbines and towers shall be set back a minimum of 1000 feet, or 2.25 times the tower height, whichever is greater, from any year-round residence that exists at the time that an application for a WECS is made to the Town. For purposes of this sub-section, a year-round residence shall be considered to be in existence if a building permit for such structure has been issued by the Town's Code Enforcement Officer, even if construction is not yet completed and the

residence is not yet occupied. For purposes of this sub-section, a seasonal dwelling is not construed to be a year-round residence.

- (d) All wind turbines and towers shall be set back from all structures and buildings, other than year round residences, that are in existence at the time of the application, or for which a building permit has been issued, a minimum of 1.5 times the height of the WECS, as defined in Article II. The Planning Board may, at its discretion, exempt minor structures, such as walls, fences, tool sheds and similar minor structures from this setback requirement.
- (e) All wind turbines and towers shall be set back from any public road a minimum of 1.5 times the height of the WECS, as defined in Article II.

(2) Noise

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

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

(3) Noise and Setback Easements

In the event that a Commercial WECS does not meet a setback requirement or exceeds the noise criteria, above, the Planning Board may grant a waiver of the setback and/or

noise criteria, except for the setback required by Sub-section 5.25(C)(1)(a), in the following circumstances:

- (a) Written consent from the affected property owners is presented to the Planning Board, stating that they are aware of the WECS and the noise and/or setback limitations contained in this Zoning Ordinance, and that consent is granted to (1) allow noise levels to exceed the maximum limits otherwise allowed and/or (2) setbacks less than required; and
- (b) In order to advise all subsequent owners of the burdened property, the consent, in the form required for an easement, has been recorded in the Cattaraugus County Clerk's Office describing the benefited and burdened properties. Such easements shall be permanent and shall state that they may not be revoked without the consent of the Planning Board, which consent shall be granted upon either the completion of the decommissioning of the benefited WECS in accordance with this Article or the acquisition of the burdened parcel by the owner of the benefited parcel or the WECS.

(4) Interference with television, microwave and radio reception

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

(5) Interference with aviation navigational systems

- (a) The applicant shall provide documentation that the proposed WECS will not cause interference with the operation of any aviation facility.
- (b) The applicant shall provide documentation that the proposed WESC complies with all Federal Aviation Administration (FAA) regulations.
- (c) Locking mechanisms to limit radar interference required: All commercial WECS shall include a locking mechanism which prevents the blades from rotating when not producing power, in order to limit airport radar interference. This provision does not apply while the WECS is "free-wheeling" during start-up and shutdown. The Planning Board may modify or eliminate the requirement for a locking mechanism if sufficient evidence is presented that no significant airport radar interference will be caused by the commercial WECS.

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

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

(9) Impact on wildlife species and habitat

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

(10) Visual Impact

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

(11) Shadow Flicker

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

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

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

(D) Decommissioning and Site Restoration Plan and Bond

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

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

(E) Road Bond

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

(F) Certification

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

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

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

(G) Liability Insurance

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

(H) Transfer of Ownership

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

(I) Inspections

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

(J) Permit Revocation

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

(K) Decommissioning of WECS

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

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

(L) Planning Board Action

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

(M) Amendments to Approval

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

(N) NYS Real Property Tax Law Exemption

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