# Town of Ellicottville Zoning Law

Effective Date: December 1, 2009
Amended: August 17, 2016

# Town of Ellicottville
# Zoning Law

Adopted: October 27, 2009
Effective Date: December 1, 2009
Amended: August 17, 2016

**By Town Board, Town of Ellicottville**

**Town of Ellicottville**

**Local Law 3 of 2009**

**entitled**

**"Town of Ellicottville Zoning Law"**

Pursuant to the Municipal Home Rule Law,

**BE IT ENACTED** by the Town Board of the Town of Ellicottville as follows:

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# ARTICLE 1
# GENERAL PROVISIONS

## Section 1.1 Short Title

This Law shall be known as the Town of Ellicottville Zoning Law, and is referred to herein as "this Code", or "this Law".

## Section 1.2 Statement of Purpose

This Code is designed and enacted to implement the objectives of the Town of Ellicottville Comprehensive Plan and to promote the general health and welfare of the present and future inhabitants of the Town, and to protect property values of the Town and the neighborhoods within the Town and to create an atmosphere attractive to visitors and residents. It is the intention of the Town in adopting this Code to fully exercise all of the powers granted to the Town by the provisions of New York State law, and all other powers granted by statute or by common law for the regulation of land uses and improvements. The intention of the Town is to assure the proper and sensitive development of land within Ellicottville in order to protect and enhance the quality of life in general. This Code is intended to allow development in a manner that encourages the preservation of scenic values, historic structures, and the unique urban scale of original Ellicottville, and provides for well planned commercial and residential centers, smooth traffic circulation, and efficient delivery of municipal services. This Code seeks to prevent development that adds to existing geologic hazards, erosion, flooding, or other conditions that create potential dangers to life and safety of the community or detract from the quality of life in the community.

## Section 1.3 Relationship to Other Laws

Where the conditions imposed by any provision of this Law are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this Law or any other law, ordinance, resolution, rule or regulation of any kind, existing or as may be adopted in the future, the laws, ordinances and regulations which are more restrictive or which impose higher standards or requirements shall govern.

The provisions of this Code are in addition to all other Town ordinances, the Laws of the State of New York, the Laws of the United States, and applicable common law. This Code shall not supersede, annul or abrogate any private land use regulation in deeds or covenants that are more restrictive than this Code.

## Section 1.4 Separability

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

## Section 1.5 Creation of Zoning Districts and Zoning Map

A. In order to carry out the purposes of this Code, zoning districts have been established as set forth in Article 3 of this Code.

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

## Section 1.6 Interpretation of Zoning District Boundaries

A. The zoning district boundary lines are intended to conform to existing property boundary lines, except when boundary lines follow a right-of-way line. However, when district boundary lines are located by specific dimensions, the dimensions shall control.

B. Where the zoning district boundary lines approximately follow the lot lines as they exist at the date of adoption of the Code, the district lines shall conform to the lot lines.

C. Where district boundaries are indicated as approximately following the centerlines or right-of-way lines of streets, highways, railroads, public utility easements, or watercourses, said boundaries shall be construed to be coincident with such lines.

## Section 1.7 Lots Located in More Than One Zoning District

A. For all lots except those located in the Conservation District, if a lot is located in more than one zoning district, the regulations for each zoning district shall govern each portion of the lot. In the event that the lot cannot conform to all regulations for each zoning district, the regulations for the district in which the greater part of the lot lies shall govern the entire lot.

B. If any portion of a lot is located in a Conservation District, the regulations contained in Section 3.1 of this Law shall govern.

## Section 1.8 More than one Principal Use per Lot

A. Other than a single family dwelling, more than one structure containing a principal permitted or special permitted use may be allowed on a single lot, provided that the yard and other requirements of this Law shall be met for each structure, as if they were located on individual lots. Where otherwise allowed in this Law, one principal building may contain more than one allowable use, such as offices and retail uses.

B. In all districts where single family dwellings are permitted, a lot may be developed for that use in accordance with the requirements of this Law, provided that there shall be no more than one single family dwelling unit on each lot. If two or more single family dwellings are proposed to be located on the same lot, the lot shall be subdivided and each new lot shall meet all the requirements of this Law, the Town's Subdivision Regulations and other applicable Town regulations.

## Section 1.9 State Environmental Quality Review

Prior to final action on any application that is required by this Code, the Town Board, Planning Board, Zoning Board of Appeals and any other authorized reviewing agency or board shall fully comply with all applicable provisions of the State Environmental Quality Review Act (SEQRA).

## Section 1.10 County Referral

Pursuant to the provisions of Section 239m of NYS General Municipal Law, prior to final action on any application that is required by this Code, the Town Board, Planning Board, Zoning Board of Appeals and any other authorized reviewing agency or board shall refer all applicable pending applications to the Cattaraugus County Planning Board for its review and recommendation.

## Section 1.11 Fees

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

B. **SEQRA fees**. Fees may be required by the Town pursuant to Section 617.13 of 6 NYCRR Part 617, the New York State Environmental Quality Review Act (SEQRA). The Town shall charge a fee to the applicant to cover the actual costs of preparing or reviewing a draft and/or final Environmental Impact Statement (EIS). The applicant shall not be charged for both the preparation and review of the EIS. If the applicant prepares the EIS, the Town shall charge the applicant for the actual cost of the review. If the applicant does not prepare the EIS, the Town shall charge the applicant for the actual cost of preparing the EIS.

## Section 1.12 Court Review

Any person or persons, jointly or severally aggrieved by any decision of the Town Board, Zoning Board of Appeals, the Planning Board or any officer, department, board or bureau of the Town, pursuant to this Code, may**,** after exhausting all available administrative remedies, apply to the Supreme Court for review by a proceeding under article seventy-eight of the civil practice law and rules.

# ARTICLE 2
# DEFINITIONS

## Section 2.1 Rules

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

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

## Section 2.2 Definitions

The following words and terms, wherever they occur in this Law, shall be interpreted as herein defined. Words used in this Law but not defined herein shall have the meaning as defined in any other local law, ordinance, or code adopted by the Town, or in common usage, if they are not otherwise defined in town law.

**Access:** The provision of vehicular and/or pedestrian ingress and egress to lots, structures or facilities.

**Accessory Apartment:** A secondary dwelling unit established in conjunction with and clearly subordinate to a principal, detached single-family dwelling unit. The accessory apartment may be located in the same structure as the principal dwelling unit or in a detached building that is located on the same lot as the principal dwelling unit.

**Accessory Building:** A building located on the same lot (or on a contiguous lot under the same ownership) as the principal building and which is (1) clearly incidental to, and customarily found in connection with such principal building or use and (2) is operated and maintained for the benefit of convenience of the owners, occupants, employees, customers or visitors of the lot with the principal use.

**Accessory Use:** A structure or use that (1) is subordinate in area, extent, and purpose to the principal use and clearly incidental to and customarily found in connection with the principal building; and (2) contributes to the comfort, convenience, or necessity of the principal use; and

(3) is located on the same lot as the principal use or on a contiguous lot under the same ownership.

**Adult Arcade:** A business enterprise that offers or maintains one or more adult viewing booths.

**Adult Entertainment Cabaret/Theater:** A public or private nightclub, bar, restaurant, theater or similar establishment which presents topless or bottomless dancers, go-go dancers, strippers, male or female impersonators, exotic dancers, motion pictures, films, video tapes or slide shows, and which establishment excludes any minor by reason of age.

**Adult Massage Establishment:** Any establishment having a fixed place of business where massages are administered for pay, including, but not limited to massage parlors, sauna baths and steam baths or similar use that excludes any minor by reason of age. This definition shall not be construed to include a hospital, nursing home, medical clinic, or office of a physician, surgeon, chiropractor, osteopath or duly licensed physical therapist or duly licensed massage therapist. This definition shall not be construed to include barber shops or beauty salons in which massages are administered only to the scalp, face, neck or shoulders. This definition shall also exclude health clubs which have facilities for physical exercise such as tennis courts, racket ball courts, or exercise rooms, and which do not receive their primary source of revenue through the administration of massages.

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

**Adult Motel/Hotel:** A motel or hotel which excludes minors by reason of age, and/or which rents, leases, or lets any room for less than a six-hour period, or rents, leases, or lets any single room more than twice in a 24-hour period.

**Adult Movie Theater:** A business enterprise which regularly features or offers to the public the presentation of motion-pictures, films, movies, DVDs, and/or sound recordings which are presented to a common audience of more than five persons in an enclosed common area or are presented in a common area of more than 150 square feet, and which excludes any minor by reason of age**.**

**Adult Painting Studio:** An establishment or business which provides the service of applying paint or other substance whether transparent or non-transparent to or on the human body and which excludes any minor by reason of age.

**Adult Retail Store:** A business establishment that offers for sale sexually oriented materials, toys and/or novelties and which excludes any minor by reason of age.

For purposes of this definition, *sexually oriented toys and novelties* are defined as instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs, except medical devices approved by the US Food and Drug Administration.

For purposed of this definition, *sexually oriented materials* are defined as toys, novelties, books, pamphlets, magazines and other periodicals, sculptures, photographs, pictures, slides, video tapes, films, CDs, CD-ROMs, DVDs, magnetic and digital media, electronic reproductions, pictorial representations, sound recordings and similar materials that have sexually explicit content.

Exception: A business enterprise which devotes less than ten percent of the stock-in-trade and/or less than ten percent of its sales and display floor area to sexually oriented materials, toys and/or novelties and which keeps all sexually oriented toys, novelties, and materials separated from other sales and display areas by an opaque wall at least eight feet in height with a management-controlled system of access to ensure that only persons over the age of 18 years are allowed to enter the area shall not be considered an Adult Retail Store. Any such excluded business shall not advertise sexually oriented materials as part of its exterior signage.

**Adult Use:** Any use or establishment constituting an adult entertainment cabaret/ theater, Adult Arcade, adult massage establishment, adult motel or hotel, Adult Movie Theater, Adult Retail Store, body painting studio, or adult model studio as defined herein, or similar use that excludes any minor by reason of age.

**Adult Viewing Booth:** Any booth or cubical that is designed or used to hold or seat patrons and that is used for presenting sexually explicit live shows, motion pictures or for viewing publications by any photographic, electronic, magnetic, digital or other means or media, for observation by five or fewer persons at one time and that excludes any minor by reason of age. An adult viewing booth shall not mean an adult entertainment cabaret, adult movie theater, or a room or enclosure that contains more than 150 square feet**.**

**Agriculture:** The use of land for the growing of plants and crops in the open, including any necessary accessory structures, but not including the processing of the agricultural product. Types of agriculture include, but are not necessarily limited to, horticulture, floriculture, viticulture, production of maple syrup and maple sugar, tree farms, and mushroom farms. The sorting, cleaning, packing, and storing of crops grown on the site, preparatory to sale and/or shipment in their natural form, shall be considered to be an allowable accessory use to an agricultural use.

**Agricultural Processing**: A building, facility, area, open or enclosed, or any location for the refinement, treatment, or conversion of agricultural products where physical, chemical or similar change of an agricultural product occurs. Examples of agricultural processing include, but are not limited to, fruit dehydrators, cold storage houses, hulling operations, and canning, and include all uses customarily incidental thereto. Agricultural processing shall not include manufacturing of secondary products using agricultural products, such as commercial kitchens, bakeries, breweries, woodworking, sawmills and wood processing plants. "Agricultural

processing" shall not include "commercial slaughterhouses."

**Agricultural Storage Structure:** An accessory storage or maintenance building used in the operation of an agricultural enterprise.

**Airport, Commercial**: Any area of land or water designed and set aside for the landing and take-off of commercial and/or private aircraft for hire. A commercial airport may include all necessary facilities for the housing, operation and maintenance of aircraft.

**Airport, Private:** Any area of land or water designed and set aside for the landing and take-off of private aircraft, without compensation. A private airport may include all necessary facilities for the housing, operation and maintenance of aircraft.

**Alley:** A public or private right-of-way primarily designed to serve as a secondary access to the side or rear of those properties whose principal frontage is on some other street or road.

**Alteration:** Other than incidental repairs, any change, addition, or modification to a building or structure, including, but not limited to, (1) rearrangement in the structural members, such as bearing walls, columns, beams, or girders (2) any change in size or number of windows and/or doors (3) stairways or exit facilities (4) electrical or plumbing systems (5) or an enlargement, whether by extending on a side or by increasing in height, (6) or the moving of the building or structure from one location or position to another.

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

**Appeal**: An application to the Zoning Board of Appeals to reverse, wholly or partly, an order, requirement, determination, or decision of the Zoning Official, who is charged with the enforcement of this Law.

**Applicant:** The owner of land who applies for a zoning permit or any other approval required under this Code, or his/her authorized representative.

**Artisan's Workshop**: A commercial establishment that serves individual households and offices by providing repair and replacement services of furnishings, such as upholstered furniture and draperies. Examples of an artisan's workshop include, but are not limited to, furniture repair, antiques repair and refinishing, metalworking, upholstery shop, and a drapery shop, where made-to-order drapes and curtains are fabricated.

**Arts and crafts studio:** A commercial use where handmade crafts and arts are produced and/or sold. An arts and crafts studio includes occupations such as painting, sculpting, pottery, weaving, glass-blowing, jewelry-making, woodworking, furniture making, candle-making, and similar crafts and arts, where the products are individually made by the artisan-owner.

**Art school:** An educational facility, usually for profit, where instruction in the arts is provided

for adults and/or children. Such arts include, but are not limited to, dance, painting, sculpture, and vocal and instrumental music.

**Athletic Club:** A commercial facility where members and/or non-members use equipment or space for the purpose of physical exercise. An "athletic club" includes a "racquet club," "health club" or a "commercial gymnasium."

**Attached Building:** Units connected on one or more sides to an adjacent unit or units by a common party wall with a separate exterior entrance for all unit(s). This shall apply to commercial as well as residential units.

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

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

**Automobile Sales Establishment:** A lot on which occurs the sale and/or leasing of four or more new or used automobiles, trucks, vans, trailers, recreational vehicles, boats or motorcycles or other similar motorized transportation vehicles, in any twelve month period. An automobile sales establishment may have, on-site, an inventory of the vehicles for sale or lease. An automobile sales establishment may provide, on-site, accessory facilities for the repair and service of the vehicles, parts storage areas, and offices.

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

**Base Flood:** The stream discharge or flood having a one percent chance of being equaled or exceeded in any given year. Also known as a 100 year flood.

**Bed and Breakfast Establishment :** An owner-occupied single-family dwelling in which two to five rooms are available for overnight accommodations to guests for a fee, and where breakfast is provided to the guests only.

**Boarding House:** A building, other than a hotel, motel, or inn where, for direct or indirect compensation and by prearrangement for definite periods, meals and rooms are provided.

**Brew pub:** A restaurant that includes the brewing of beer on the premises as an accessory use.

**Buffer Yard:** An area of land containing materials, such as berms, fencing and landscaping,

used to provide sight and/or sound screening from adjoining properties and rights-of-way.

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

**Building, Attached:** (See Attached Building.)

**Building, Detached:** Any building or structure separated from another building.

**Building Height:** see "Height."

**Building Official:** The official authorized by the Town Board to enforce the provisions of the **New York State** Building Code.

**Building, Principal:** A building in which is conducted the primary use of the lot on which the building is located.

**Building Supply Store:** A retail establishment that sells a diverse range of hardware, lumber, tools, and related materials generally used in the maintenance, repair or construction of buildings. A building supply store may also sell appliances, lighting fixtures, plumbing fixtures and similar products for the interior of buildings. A building supply store may also sell lawn and garden supplies.

**Bulk Fuel Storage:** The storage of petroleum products, natural gas, or propane in above ground or below ground storage containers designed for wholesale distribution. No refining or processing of bulk fuel products shall be permitted on-site. A gasoline service station shall not be construed to be "bulk fuel storage."

**Business Office:** See "Office, business."

**Business Support Services**: A commercial establishment providing services to business establishments on a fee or contract basis, including but not limited to advertising services, mailing services, business equipment rental and leasing, employment agency, building maintenance and janitorial services, small business machine repair services, and/or protective services.

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

(2) Any area that is occupied or intended or designed for occupancy by transients using recreational vehicles, motor homes or vacation trailers, for temporary, recreational overnight lodging; or

(3) Any land, including any building thereon, used for any assembly of persons

for what are commonly known as "day camp" purposes, including recreation, arts and crafts, sports, and incidental food service. Types of camps include YMCA campgrounds and summer camp programs.

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

**Cargo Terminal:** A transportation facility in which quantities of goods or container cargo are stored without undergoing any manufacturing processes, transferred to other carriers, or stored outdoors in order to transfer them to other locations.

**Cell:** The geographical area served by a BTS (base transceiver station).

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

**Child Nursery:** An establishment intended for the care and/or instruction, whether for compensation or not, of three or more children other than members of the family residing on the premises, but not including a public or private school.

**Civic Facility:** Buildings, structures and uses owned and/or operated by a governmental agency, fire district, fire company, or public library.

**Certificate of Occupancy:** A permit issued by the Building Official upon completion of construction, alteration or change in occupancy or use of a building, which certifies that provisions specified in the building permit application and the New York State building code have been met, that a building or development has been inspected, and that it is eligible to be occupied.

**Certificate of Zoning Compliance:** A certificate issued by the Zoning Official that certifies that conditions specified in this Law have been met, that the parcel is properly zoned for the use that is proposed, and that the intended use is allowable. Said certificate shall acknowledge any adjustments to the requirements of this Law granted by the Zoning Board of Appeals or any approvals and conditions of approval granted by the Planning Board. Certificates of Zoning Compliance will be issued after all necessary construction has been completed and prior to occupancy of the structure.

**Church:** See "House of Worship."

**Clinic, Medical and dental:** A building or structure where two or more members of the medical profession, physicians, dentists, chiropractors, osteopaths, and/or occupational or physical therapists, provide diagnosis and treatment to the general public without overnight accommodation. A medical clinic may include such uses as reception areas, offices, consultation rooms, x-ray facilities, minor operating rooms and/or a pharmacy.

**Cluster subdivision:** A subdivision of land in which the applicable zoning law regulations are

modified to provide an alternative permitted method for the layout, configuration and design of lots, buildings and structures, roads, utility lines and other infrastructure, parks and landscaping, in order to preserve the natural and scenic qualities of open lands.

**College:** A post-secondary institution authorized by the state to award associate, baccalaureate, master or doctoral degrees.

**Commercial Recreation:** See "recreation, commercial."

**Commercial Use:** A business use or activity, at a scale greater than a home based business, involving retail marketing of goods and services. Examples of commercial establishments include offices and retail shops. See also: service commercial establishment, support commercial facilities, and retail establishment.

**Common Open Space:** See "Open Space, common."

**Comprehensive Plan:** A comprehensive plan for development of the Town, adopted by the Town Board pursuant to State law, and including any part of such plan separately adopted and any amendment to such plan, or parts thereof.

**Construction, Start of:** The initiation, excluding planning and design, of any phase of a project, including any physical alteration of the property and/or land preparation, such as clearing, grading, and filling; installation of roads, streets and/or walkways; excavation for a basement, footings, piers, or foundations or the erection of temporary forms. "Start of Construction" also includes the placement and/or installation on the property of accessory buildings (garages, sheds), storage trailers, and building materials. "Start of construction" also applies to "substantial improvement."

**Contractor's Shop:** A commercial establishment used for the indoor use and storage of a contractor's equipment, supplies, and materials. A contractor's shop may also be used for preliminary custom work, such as woodworking, milling, fabrication and/or painting or staining of items that are delivered to a client off-site. In the General Commercial District and Industrial District all custom work shall be conducted entirely within an enclosed building.

**Contractor's Yard:** An establishment of any general contractor or builder where equipment and materials are stored or where a contractor performs shop or assembly work. The contractor's office may also be located on site.

**Convalescent Home:** See "Nursing Home."

**Copy Shop:** A retail facility for the custom reproduction of written or graphic materials on a custom order basis for individuals or businesses. Typical processes include, but are not limited to photocopying, blueprint, facsimile sending and receiving, laminating and offset printing.

**Counsel to the Town**: The attorney admitted to practice in the State of New York and designated by the Town Board to furnish legal assistance for the administration of this Law.

**Critical Root Zone:** A circular region measured outward from a tree trunk representing the essential area of the roots that must be maintained in order for the tree to survive**.**

**Cul-de-sac:** A local road with only one outlet and an appropriate terminus for the safe and convenient reversal of traffic movement. Also see "Road, dead-end."

**Day Care Center**, **Child:** An establishment where care is provided for one or more children on a regular basis, for periods of less than 24 hours per day in a place other than the child's own dwelling unit. Programs could include those for children who are under the minimum age to attend public school and/or pre-school, after-school and school-vacation care for school-aged children. Day care facilities that are regulated by Section 390 of NYS Social Services Law are not included in this definition and are exempt from these regulations.

**Day Care Center, Adult:** A facility providing care for the elderly and/or functionally impaired adults in a protective setting for periods of less than 24 hours per day.

**Department Store:** A business that is conducted under a single owner's name, wherein a variety of unrelated merchandise is sold directly to the customer.

**Dependent Mobile Home:** See "Mobile home, dependent."

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

**Digital Display:** A portion of a sign, where the sign content is displayed electronically. A digital display contains a static image, which can be electronically changed.

**Discontinue:** To cease from using land, structures, or any premises for its intended use.

**Driveway:** A private access strip of land that provides vehicular connection to a public or private road or street. For residential uses, a driveway shall serve no more than three single family lots. See also "Road, private".

**Dry Cleaning and Laundry, Commercial:** A business which launders or dry cleans clothes and other articles, where the articles for cleaning are dropped off at a remote location.

**Duplex:** A structure containing two dwelling units, each of which has direct access to the outside. (See also "Dwelling, Two Family").

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

**Dwelling, Attached Single Family:** A dwelling unit that is joined to one or more other dwelling units at one or more sides by a party wall.

**Dwelling Unit, Detached Single Family:** A building that contains one dwelling unit, which is not attached to any other dwelling by any means and which is surrounded by open space and/or yards.

**Dwelling, Multiple Family:** A building that contains three or more dwelling units, which may have one or more common entrances to access the building; the individual dwelling units are accessed from a common interior hallway.

**Dwelling, Single Family:** A building that contains one dwelling unit.

**Dwelling, Two Family:** A building that contains two dwelling units; a duplex.

**Dwelling, Three Family:** A building that contains three dwelling units; a triplex.

**Dwelling, Four Family:** A building that contains four dwelling units; a fourplex.

**Easement:** Authorization by a property owner for the use by another, and for a specified purpose, of any designated part of his property.

**Electronic Message Display:** A sign with a changing display, composed of a series of lights, that is capable of displaying words, symbols, figures, or images and that can be electronically changed by remote or automatic means. A "Time and Temperature Unit" is not an electronic message display.

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

**Farm Stand:** A permanent building or structure used for the retail sale of agricultural products, whether produced on the site or off the site on which the stand is located, provided that products offered for sale are locally grown in the Western New York region. A Farm Stand may be seasonal or may operate year-round. Agricultural products may include fruit, vegetables, flowers, herbs, plants, Christmas trees, eggs, and similar items. Sales of home-processed food products such as jams, jellies, pickles, sauces or baked goods, which are prepared at a location other than the Farm Stand, may be allowed; however no food for sale may be cooked or prepared at a farm stand. No commercially processed or packaged foodstuffs shall be sold at a farm stand. A farm stand shall not exceed 15 feet in height and shall conform to all required setbacks for the zoning district in which it is located.
*Parking*: Off-street parking shall be provided outside the road right-of-way.
*Signs*: Signs for a Farm stand shall comply with the requirements of Section 12.1 of this Zoning Law. If the signs are permanent, a sign permit shall be required.
(Also see "Produce Stand.")

**Farmers' Market:** A temporary use where, on designated days and times, growers and producers of horticultural and agricultural products sell their products directly to the public from vehicles or temporary (seasonal during farmers' market) stands. Products may include items such as fruits, vegetables, herbs, spices, nuts, live plants, flowers, honey, maple syrup, eggs, meat, poultry, dairy products, baked goods, jams and jellies, and similar products. Products may also include arts and crafts items produced by the vendor. Items for sale may also include prepared food and beverages, whether for consumption on-site or off-site.

**Fence:** A structure constructed for reasons of privacy, security, or aesthetics which is located in such a manner as to separate or divide areas. Includes masonry walls and may or may not be sight obscuring or light tight.

**Financial Institution:** The premises of a bank, credit union, savings and loan company, trust company, finance company, mortgage company, investment company or similar institution.

**Flood Plain:** Any area directly adjoining a river, stream, or water course, or other body of standing water in which a potential flood hazard exists due to inundation or overflow of water, whether or not sufficient velocity exists to transport or deposit debris, scour the soil surface, dislodge or damage buildings, or erode the banks of the stream.

**Floodway:** The channel of a river, stream, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Floodway Fringe:** That portion of the Special Flood Hazard Area (SFHA) that is not in the floodway as designated by FEMA on the Town of Ellicottville FIRM of its latest revision.

**Floor Area, Gross:** See "Gross Floor Area."

**Floor Area, Gross Residential (GRFA):** See "Gross Residential Floor Area."

**Food Processing Establishments:** An industrial use producing or processing foods for human consumption and certain related products. Food processing establishments include commercial bakeries (except bakeries that produce goods only for on-site sales with no wider distribution); bottling of beverages; canning; dairy products processing, including the manufacture of ice cream; preparation of frozen foods, and similar activities**.**

**Food Stand:** A temporary, commercial, food service establishment, which is open seasonally on designated days and times in the same, permanent location. The operator of a Food Stand shall comply with all state and county health department regulations concerning food preparation and sales. A food truck, which is mobile, is not a "food stand."

**Fourplex:** A building containing four dwelling units, each of which has direct access to the outside. See also "Dwelling, Four Family."

**Fraternal organization:** A building or portion thereof or premises owned and/or operated by a

corporation or association for a social, educational or recreational activity, but not primarily for profit or to render a service which is customarily carried on as a business.

**Frontage:** The horizontal distance between the side lot lines measured at the point where the side lot lines intersect the road right-of-way line. All sides of a lot that abuts a road or street shall be considered frontage. On curvilinear streets, the arc between the side lot lines shall be considered the lot frontage.

**Garage, Private:** A detached accessory building, or a portion of a main building, used for the storage of motor vehicles for the tenants or occupants of a specified building and not by the general public.

**Garage, Commercial:** A structure that is used for the short term parking of more than four vehicles, which is available to the general public, whether or not a fee is charged.

**Gasoline Service Station:** A retail establishment where motor vehicle fuels and lubricants are sold to individuals. A gasoline service station may have a retail convenience store as an accessory use.

**Golf Course:** An establishment for playing the game of golf and having tees, greens, fairways and hazards. A golf course may have a clubhouse as an accessory use.

**Grade:** The slope of a road, street, or other public way, specified in percentage terms.

**Grade, Natural:** Elevation of the existing surface of the land prior to commencement of construction of any improvements proposed or any previous site disturbance. Natural grade, when not readily established due to prior modifications in terrain, shall be fixed by reference elevations and slopes at points where the prior disturbance appears to meet the undisturbed portions of the subject property or the adjacent property's undisturbed grade. The estimated natural grade shall tie into the elevation and slopes of adjoining properties without creating a need for new retaining walls, or abrupt differences in the visual slope and elevation of the land; and not change the direction or flow of run-off water.

**Grade, Finished:** The final elevation of the ground level after development**.**

**Greenhouse:** A commercial business whose principal activity is the growing of plants within an enclosed building. Plants may be stored on site, and may be sold to wholesalers and/or to the general public. Outside storage and/or display areas of plants and gardening equipment is allowed as an accessory use.

**Gross Floor Area:** The sum of the floor area of all stories in a structure, measured from the exterior faces of exterior walls, or in the case of a common wall separating two buildings, from the centerline of such common wall.

**Gross Residential Floor Area (GRFA):** The sum of the floor area of all stories in a residential structure, measured from the exterior faces of exterior walls, or in the case of a

common wall separating two buildings, from the centerline of such common wall. GRFA is used to compute the density for townhouse and other single family attached developments. Also see Article 4.

**Height:** The vertical distance, measured from the adjacent ground elevation of the finished or natural grade, whichever is lower, at the lowest point where the natural or finished grade meets the foundation wall to the following points on the building or structure:

a) For flat roofs or roofs with a slope of 3:12 or lower, height shall be measured to the highest point on the roof.
b) For mansard roofs, height shall be measured to the deck line. For purposes of this definition, the deck line is the point at which the pitch of the roof changes, the inflection point.
c) For hip, gable or gambrel roofs where the slope of the roof is higher than 3:12, height shall be measured to a point midway between the highest ridge of the building and the lowest point on the corresponding eve.
d) For other roof shapes, such as domed or vaulted shapes, height shall be measured to the highest point of the roof.

In no case shall a mansard roof or the parapet wall of a flat roof extend more than 18" above the deck line or maximum height, whichever is lower.

**Highway, Limited Access:** See "Road System Classification."

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

**Home Occupation:** Any land use activity undertaken for gain (regardless of whether or not a profit is made) within a dwelling unit, or within a structure that is accessory to the dwelling unit and on the same lot, by the resident or residents thereof. A home occupation is an accessory use, and shall be clearly incidental and secondary to the use of the property as a residence. See Article 12.

**Home Retail and Service Trade Establishment:** An accessory use to the residential use of a property, involving retail sales or product servicing, conducted on the premises by the residents thereof, having not more than one paid employee, which is clearly secondary to the use of the building for living purposes and does not change the character of the neighborhood. The use may be conducted in the residence or in an accessory building. Full line grocery stores, whether local or chain are specifically excluded, but specialty grocery products, natural foods, and farm products may be sold. Sales and service of vehicles that require state registration and boats are specifically prohibited. Adult uses, including but not limited to, adult book stores, adult video stores, adult entertainment cabarets, adult theaters, peep shows, massage establishments, adult motels or hotels, body painting studios or adult model studios are specifically excluded from the

definition of Home Retail and Service Trade Establishment.

**Host Community Agreement:** An agreement between an applicant for a Utility Scale Wind Energy Conversion System and the Town of Ellicottville, similar to a PILOT (Payment in Lieu of Taxes) agreement. Such Agreement shall identify the special costs to the Town of hosting a Utility Scale Wind Energy Conversion System and providing a means by which the Project Proponent will provide periodic payments for such costs**.**

**Hotel/Motel/Inn:** A building containing sleeping rooms for the temporary occupancy of guests. Accessory facilities may include a lobby, meeting rooms, recreation facilities, group dining facilities and/or other facilities or activities customarily associated with hotels or hotel apartments. "Hotel", "motel," and "inn" do not include boarding houses.

**House of Worship:** A structure owned or leased by a religious organization, which people regularly attend to participate in or hold religious services, meetings or other related religious activities. A house of worship includes churches, synagogues, temples, and mosques.

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

**Industrial Use:** A business use or activity, that involves manufacturing, fabrication, assembly, and/or warehousing.

**Junk Yard:** As defined in the Town of Ellicottville Junk Yard Ordinance, as may be amended from time to time. A "Junk Yard" is not a "Recycling Facility."

**Keeping of Livestock:** The breeding, raising or grazing of livestock, including dairy farming or beef cattle, bison ranches, apiculture, and fish farming. Products derived from the livestock, such as milk or wool, may be stored on-site, but no commercial manufacturing or processing of the product may be allowed (for example, no manufacture of ice cream or cheese). "Keeping of livestock" shall not include "commercial slaughterhouses." An agricultural slaughterhouse shall be an allowable accessory use.

**Kennel** Any establishment where household pets, such as dogs and cats, are boarded, trained or bred for profit.

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

**Library:** A civic facility for the use, but not sale, of books, videos, CDs, and similar materials. A library may have computers and/or meeting rooms available for public use.

**Licensed Professional Engineer:** An engineer licensed to practice in the State of New York.

**Liftway:** The necessary right-of-way, both surface and air space, for the operation of any tram covered by this Law.

**Livestock:** Poultry, dairy and beef cattle, horses, sheep, goats, llamas, alpacas, bison, or any similar outdoor farm animal, but not including cats, dogs, or other household pets.

**Local Government:** The Town of Ellicottville, New York.

**Local Road:** See "Road System Classification."

**Loft:** In a building, a story in which part of the space is open to the floor below. When a loft contains heated, habitable space, it shall be considered to be a half-story for purposes of calculating height.

**Lot:** A parcel of land with frontage on or legal access to a public or private street or road, whether or not occupied by a building or structure, which is in one ownership.

**Lot, Corner:** A lot situated at the intersection of two roads or streets.

**Lot Depth:** The average distance between the front and rear lot lines, measured approximately perpendicular to the front lot line.

**Lot Lines:** The property lines bounding a lot. Where the property lines extend to the centerline of any road right-of-way, for purposes of calculating the minimum lot area and yard requirements of this Law, the lot lines shall be construed to begin at the right-of-way line.

**Lot Line, Front:** The property line dividing a lot from the right-of-way of the road or street.

**Lot Line, Rear:** The property line opposite the front lot line.

**Lot Line, Side:** Any lot line other than a front or rear lot line.

**Lot of Record:** Any lot lawfully existing at the time of adoption of or amendment to this Law.

**Lot, Panhandle:** A polygonal shaped lot with the appearance of a frying pan or flag and staff, where the handle is most often used as the point of access to the lot.

**Lot Width:** The distance between the side lot lines.

**Lumber Milling:** Processing of timber involving milling to produce rough and finished lumber and other wood materials for use in other manufacturing, craft, or construction processes. May also include the storage of raw timber and processed lumber. May also include air or kiln drying of lumber.

**Luminance:** The level of light emitted from a digital display. Luminance is usually measured in nits or candelas per meter squared ($cd/m^2$). One nit = one $cd/m^2$ .

**Machine Shop:** An industrial facility where precision tools, machines and equipment are fabricated and/or assembled, including tool, die and pattern making. A machine shop may contain equipment such as lathes and milling machines.

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

**Manufactured Home Park:** A plot or parcel of ground containing thereon two or more manufactured and/or mobile homes.

**Master Planned Development:** A development designed and reviewed under the Master Planned Development review processes described in Article 4 of this Law.

**Medical clinic:** See "clinic, medical and dental."

**Micro-brewery:** A small-scale production facility at which beer is produced and bottled and at which wholesale and retail storage and distribution may occur. The volume of production of such facility may not exceed 15,000 barrels or 465,000 gallons per year. The facility may have a tasting room for the consumption and sales of products produced on site.

**Micro-distillery:** A small-scale, craft alcohol production facility, which may include the production of distilled spirits, hard ciders, and/or wine. The volume of production of such a facility may not exceed 35,000 gallons per year. The facility may have a tasting room for the consumption and sales of products produced on site.

**Mineral:** Any naturally formed, usually inorganic, solid material located on or below the surface of the earth. For the purposes of this Law, peat and topsoil shall be considered to be minerals.

**Mining:** Extraction of gravel, sand, minerals, peat and/or topsoil for sale or use off site. The moving topsoil, sand and/or gravel from one part of a property to another part of the same property in the same ownership shall not be construed to be mining. Site work incidental to another approved land use shall not be construed to be mining. Mining is further defined as Commercial Mining and Incidental Mining.

> **Commercial Mining:** The extraction of more than 1000 tons or 750 cubic yards of minerals, whichever is less, in any consecutive 12 month period.
>
> **Incidental Mining:** The extraction of less than 1000 tons or 750 cubic yards of minerals, whichever is less, in any consecutive 12 month period**.**

**Mixed Occupancy Building:** A single building containing more than one type of land use, such

as, but not limited to, residential, commercial, public, entertainment, or office. Each use contained within a Mixed Occupancy Building shall be individually allowable as a permitted or special permitted use in the zoning district in which the building is located.

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

**Mobile Home, Dependent:** A mobile and/or manufactured home which lacks a flush toilet and a bath or shower.

**Model Home:** A dwelling unit used initially for display purposes as an example of dwelling units available or to be available for sale or rental in a subdivision or other residential development. Model homes shall be located in the subdivision that they advertise. A model home may also incorporate sales or rental offices for the dwellings within the development.

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

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

**Movie Theater:** A building or part of a building devoted to showing motion pictures.

**Municipality:** The Town of Ellicottville, New York.

**Nameplate:** A sign indicating the name and address of a building or the name of an occupant thereof, and the practice of a permitted occupation therein**.**

**Non-Conforming Use:** The use of a building, structure, or land which does not conform to current use regulations for the district in which it is situated, but which was in conformity with prior regulations at the time of its establishment, or which was in existence prior to the establishment of use regulations for the district in which it is situated.

**Nursery, Child:** See "Child Nursery."

**Nursing Home:** An institution described also as a "rest home", or "convalescent home", other than a hospital, in which persons are lodged and furnished with care rather than diagnosis or treatment.

**Office, Professional:** A building or space used by persons such as accountants, architects,

artists, dentists, designers, engineers, lawyers, physicians, realtors, teachers, and others who by virtue of training and/or license, are qualified to perform services of a professional nature, and/or where storage of goods and sale of merchandise is minimal and secondary to performance of the service.

**Office, Business:** A room, suite of rooms or a building in which one or more persons conducts the affairs of a business, profession, service, industry or government, and where storage of goods and sale of merchandise is minimal and secondary to the performance of the service.

**Off-premises Signs**: See "signs, off-premises."

**Open Space:** Land in an essentially undeveloped state that is used for recreation, resource protection, habitat protection, nature preserves, view protection, amenity, and/or buffer yards.

**Open Space, Common:** Facilities and yard areas identified within projects for the use and enjoyment of the residents and maintained and operated by an organization of property holders.

**Open Space, Usable:** An area, including required yards, that is free of buildings, structures, and other substantial improvements, and includes without limitation:

a. outdoor swimming pools, swimming pool areas, hard surfaced recreational areas, and other recreational areas that are unenclosed; and/or
b. fences, canopies, bath houses**,** and gazebos; and/or
c. driveways that cross the required front or side yard and serve fewer than four parking spaces; and/or
d. the ground surface above the underground facilities, provided it otherwise qualifies as usable open space pursuant to this definition; and/or
e. sidewalks; and/or
f. At grade patios and steps under thirty (30) inches high; and/or
g. ponds, streams, wetlands, and naturally vegetated land; and/or
h. terraced landscaped features, walls, fences and similar landscaping features.

**Usable open space excludes:**

a. public or private rights-of-way for roads or highways; and
b. roofs**;** and
c. open parking areas**;** and
d. parking garages or structures

In all zoning districts, no more than thirty percent of the usable open space can be in excess of 25% in slope. In the Conservation and A-R Zoning Districts, land used for agriculture and/or forestry, excluding buildings, shall be considered to be usable open space.

**Owner:** Any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to or proprietary interest in the land.

**Park:** Any publicly-owned land, or land owned by a non-profit organization, that is used for recreation and/or natural resource or open space preservation.

**Parking Lot:** An area other than a road used for the parking of more than four automobiles.

**Parking Lot, Commercial:** A lot that is used for the short term parking of vehicles that is available to the general public, whether or not a fee is charged**.**

**Parking Space:** An off-street area available for the parking of one motor vehicle.

**Passenger Tramway:** A mechanical device for the primary purpose of transporting passengers by means of chairs or enclosed compartments which are suspended from cables or travel along cables on or above the ground, the devices described in Article 3 of this Law and/or passenger carrying devices operating on rails.

**Performing Arts Center:** A building or part of a building devoted to dramatic, musical or live performances, and similar events.

**Permitted Use**: A use of land which is allowable as-of-right, without first having to obtain a Special Use Permit.

**Personal Service Establishment:** A business establishment where professional or personal services are provided for gain and where the retail sale of goods, wares, merchandise, articles or things is only accessory to the provision of such services, including but not limited to the following: barber shops, beauty shops, tailor shops, and shoe repair shops.

**Plant Nursery:** Land used for the growing of sod, flowers, bushes, trees or other gardening, landscaping or orchard stock for wholesale or retail sale.

**Planning Board:** Planning Board of the Town of Ellicottville, New York.

**Printing Plant:** An industrial facility involving a process where large scale printing, imprinting, reproducing, and duplication of images occurs, using printing methods including but not limited to offset printing, lithography, and screen process printing. Publishing, binding and engraving may also be conducted.

**Private Viewing Booth:** Any booth or cubical that is designed or used to hold or seat patrons and that is used for presenting live shows, motion pictures or for viewing publications by any photographic, electronic, magnetic, digital or other means or media, for observation by five or fewer persons at one time or any booth containing 150 square feet or less**.**

**Produce Stand***:* A seasonal stand, tent, structure, or building, not to exceed a gross floor area of 500 square feet, from which seasonal agricultural products are sold. Agricultural products may include fruit, vegetables, flowers, herbs, plants, Christmas trees, eggs and similar items. For purposes of this definition "premises" may include abutting parcels under the same ownership. No more than one produce stand can be located on any one premises. A produce stand is an accessory use to the primarily agricultural use of the property. A produce stand shall not exceed 15 feet in height and shall conform to all required setbacks for the zoning district in which it is located, except that it may encroach into the front yard setback; however, the stand shall be set back a minimum of 15 feet from the road right-of-way.

*Parking*: Off-street parking shall be provided outside the road right-of-way. The parking area need not be paved.
*Signs*: A produce stand may have a total of two temporary ground identification signs, which shall conform to the requirements for temporary signs in Section 12.1C(1) of the Zoning Law. Such signs do not require a sign permit; however, they may not be located off-premises and they shall be removed when the produce stand closes for the season.
(Also see "Farm Stand.")

**Product assembly:** An industrial use in which finished products or parts of products are assembled from previously manufactured or prepared materials, which were produced off-site. Product assembly also includes product packaging, including bottling (but not bottling of liquids for human consumption; see "Food Processing establishment"), packing, wrapping and boxing of products. Examples of product assembly include, but are not limited to: production of pharmaceutical, cosmetic products, and toiletries; fabrication of wood products such as boats, boxes, cabinets, furniture and other wood products, where the wood is milled off site; fabrication of metal products such as panels, sheets, tubes and rods, metal foil, metal furniture, and sheet metal products; fabrication of clothing and other textile products from previously manufactured materials; the assembly of mechanical, electric, electromechanical and electronic devices, components, machines and appliances; and the fabrication and assembly of household and office items and furnishings, scientific, medical, dental and photographic equipment and supplies, hardware, recreation equipment, toys, bicycles, and musical instruments.

**Professional Land Surveyor:** Land surveyor properly licensed and registered in the State of New York.

**Property Line:** A line indicating the boundary of a piece of property shown on a recorded document. See "lot line."

**Public Use:** Government-owned facilities to which the public has access, such as public parks, schools, administrative buildings, recreational, cultural and service buildings, but not including public land or buildings devoted solely to the storage and maintenance of equipment and material or the disposal of refuse.

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

**Quasi-Public Use:** A use operated by a private nonprofit educational, religious, recreational, charitable or philanthropic institution, having the purpose primarily of serving the general public, such as churches, private schools, or similar uses.

**Recreation, Commercial:** Recreation facilities operated as business on private or public property and open to the public for a fee, such as skiing facilities, tennis court, equestrian center, skating rink, bowling alleys and similar facilities, and support facilities customarily associated with the particular type of commercial recreation. Commercial facilities for the riding of ATVs and similar motorized vehicles are excluded from this definition of "commercial recreation."

**Recreation, Private:** Recreation facilities operated on private property and not open to the public.

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

**Recycling Facility:** A building and/or site in which source-separated recoverable materials, such as newspapers, glassware, and metal cans are collected, stored, flattened, crushed, or bundled. A recycling facility shall not include manufacturing facilities. A recycling facility is not a junk yard.

**Research and Development Facility:** Scientific or research laboratories devoted to research, design, and/or experimentation, which may include processing and production operations incidental to research and development, but not including manufacture or sale of products.

**Restaurant:** A building in which food is prepared and served for consumption within the premises.

**Restaurant, Drive-In:** A building in which food is prepared and served for consumption on the premises, and which includes a facility which allows food to be ordered and taken from the premises for consumption elsewhere, without leaving a vehicle.

**Restaurant, Outdoor dining:** A dining area with seats and /or tables located outdoors of a restaurant, coffee shop, or other food service establishment. This seating may be in addition to the indoor seating or it may be the only easting available for the restaurant.

**Retail Establishment:** A commercial enterprise that provides goods and/or services for sale directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Retail establishment is further defined as General Retail Establishment, Service Retail Establishment and Bulk Merchandise Retail Establishment.

> **General Retail Establishment**: A retail establishment smaller in scale than a bulk merchandise retail establishment, which generally offers merchandise that is smaller than bulk merchandise. General Retail establishments may include, for example, stores such as bookstores, jewelry stores, gift shops, and clothing stores.
>
> **Service Retail Establishment**: Retail establishments that primarily render services rather than goods. Such services may include but not be limited to copy shops, package and postal services, photo processing, travel agencies and financial institutions.
>
> **Bulk Merchandise Retail Establishment**: A retail establishment that requires a large amount of floor space to display merchandise and/or which involves goods that are both

warehoused and retailed at the same location. Examples of bulk merchandise retail establishments are stores that sell furniture, large appliances, garden supplies and similar bulky items. An "Automobile Sales Establishment" and a "Building Supply Store" shall not be considered a "bulk merchandise retail establishment."

**Riding Academy:** A commercial establishment in which horses are available for hire, and/or where people may bring their own horses to ride on the premises.

**Riding Stables:** A commercial establishment in which more than three horses, which are not owned by the property owner, are boarded and cared for. Horses may also be available for hire. A riding stable may also provide lessons in riding and jumping, and/or the handling, training, and care of horses.

**Right-of-Way:** A strip of land occupied or intended to be occupied by a street, crosswalk, railroad, road, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, shade trees, or for another special use. The usage of the term "right-of-way" for land platting purposes shall mean that every right-of-way hereafter established and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such right-of-way and not included within the dimensions or areas of such lots or parcels. Rights-of-way intended for roads, streets, crosswalks, water mains, sanitary sewers, storm drains, shade trees, or any other use involving maintenance by a public agency shall be dedicated to public use by the maker of the plat on which such right-of-way is established.

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

**Road, Dead End:** A way or portion of a way with only one vehicular traffic outlet.

**Road, Private:** A road that has not been accepted by the Town of Ellicottville or other governmental entity and that is privately owned and maintained.

**Road, Public:** A road which has been dedicated and accepted by the Town, which the Town has acquired by prescriptive right or which the Town owns, or accepted for dedication, or a thoroughfare which has been dedicated or made public by right of use and which affords access to abutting property.

**Road System Classification**: For the purpose of providing for the development of the streets, highways, roads, and right-of-way in and for their future improvement, reconstruction, realignment, and necessary widening, including provision for curbs and sidewalks, each existing street, highway, road and right-of-way, and those located on approved and filed plats, have been designated on the Official Map of the Town and classified therein. The classification of each street, highway, road and right-of-way is based upon its location in the respective zoning districts of the Town and its present and estimated future traffic volume and its relative importance and function.

**Arterial:** A road intended to move through traffic to and from such major attractions

as central business districts, regional shopping centers, colleges and/or universities, military installations, major industrial areas, and similar traffic generators with the governmental unit; and/or as a route for traffic between communities or large areas.

**Collector Roads:** A road intended to move traffic from local roads to arterials. A collector road serves a neighborhood or large subdivision.

**Highway, Limited Access:** A freeway or expressway, providing a traffic way for through traffic, in respect to which owners or occupants of abutting property on lands and other persons have no legal right to access to or from the same, except at such points and in such manner as may be determined by the New York State Department of Transportation, having jurisdiction over such traffic way.

**Local Road:** A road intended to provide access to other roads from individual properties and to provide right-of-way beneath it for sewer, water, and storm drainage pipes.

**Sawmill:** A for-profit commercial establishment where logs are sawn, split, shaved, stripped, planed, or chipped or otherwise processed. A "sawmill" does not include the processing of timber for use on the same lot by the owner or resident of that lot.

**School:** A facility, either public or private, that provides a curriculum of elementary, secondary and/or academic instruction, including pre-kindergartens, kindergartens, elementary schools, junior high schools, and/or high schools, but not including the home-schooling of children in their own home by their parents and/or guardians.

**Scenic Resource:** Any road, highway, lane, district, or corridor designated pursuant to Article 49 of the New York State Environmental Conservation law. Any area designated a Scenic Area of statewide Significance pursuant to New York State's Coastal Management Program (19 NYCRR 602.5). Ridgelines designated in the Town of Ellicottville Comprehensive Plan.

**Service Commercial Establishment:** Any commercial establishment whose primary activity is the provision of assistance, as opposed to products, to individuals, business, industry, government or other enterprises. Examples of service commercial establishments include automobile repair, mortuaries, commercial dry cleaning facilities and similar services.

**Setback:** The required distance between every structure and the lot lines of the lot on which it is located. See "Yard."

**Shopping plaza:** A group of stores located on one lot, which has been planned and designed and which functions as a unit, and which contains off-street parking facilities. A shopping plaza may contain a mixture of commercial uses, including office, restaurant, and retail stores.

**Sign:** Any structure, display, device or representation which is designed or used to advertise or call attention to any thing, person, business, realty subdivision or development, activity or place and is visible from a highway, road**,** street or other public right-of-way. This definition is not to

be restricted to traditional and familiar forms but will include any new and evolving technologies such as, but not limited to, laser lights.

This definition shall not include holiday decorations; the noncommercial use of any flag, emblem, insignia or other display of any nation or political subdivision; traffic, safety or similar regulatory devices; scoreboards; or customary displays of merchandise or objects and materials placed behind a store window.

**Sign, Agricultural**: A sign used to identify rows of crops, types of cattle, the name of the farm, "farms of distinction" and similar identification signs.

**Sign Area:** The entire face of a sign, including the advertising surface and any framing, trim, or molding, but not including the supporting structure. Also see "sign face."

**Sign, Awning:** A sign placed on or affixed to or incorporated into the surface of an awning, canopy or similar device.

**Sign, Changeable Copy (Reader board):** A sign on which letters and/or numbers are changed manually, i.e., a reader board with changeable letters**.**

**Sign, Directional:** An on-premises sign that includes information assisting in the flow of pedestrian or vehicular traffic, such as "enter," "exit," "one-way," "parking ahead" or similar directions.

**Sign Face:** The area or display surface of a sign that used for the message. "Sign Face" does not include the structural supports of the sign. A double sided sign has two sign faces. For purposes of measurement, the sign area for a double-faced sign shall be the area of one face only.

**Sign, Flashing:** An illuminated sign on which the artificial light is not maintained constant or stationary in intensity or color at all times when such sign is in use. "Time and Temperature Units" are not considered to be flashing signs for the purpose of this Law**.**

**Sign, Ground:** Any sign permanently anchored to the ground, which stands alone on its own foundation and structural supports and which is detached from any supporting elements of any building**.**

**Sign, off-premises:** A sign of any description that is displayed on any property other than the actual site of the thing, person, business, realty subdivision or development, activity or place advertised on the sign.

**Sign, Portable:** A sign that is not permanently affixed to a structure or to the ground, including a sign that is mounted on wheels**.**

**Sign, Projecting:** A sign, normally double faced, which is affixed to a wall of any structure or building, and any part of which projects by more than twelve (12) inches from such wall. A projecting sign may be either perpendicular or parallel to the building to which it is affixed.

**Sign, Real Estate:** A sign that advertises the sale or rental of the property**.**

**Sign, Roof:** A sign erected on, against or above a roof and which extends above any point of a building with a flat roof, above the main ridge line of a building with a pitched roof or the deck line of a building with a mansard roof.

**Sign, Sandwich Board (A-Frame sign):** A type of portable sign that is constructed in such a manner as to form an "A" or tent-like shape, connected at the top of the sign**.**

**Sign Structure:** Any structure which supports, has supported or is intended to support or help maintain a sign that is in a stationary position.

**Sign, Vehicle:** A sign that is attached to or painted on a vehicle that is parked on, near, or adjacent to any property, the principal purpose of which is to attract attention to a product sold or business located on the property. A vehicle, which is used for business purposes and which is driven on a regular basis, containing a business logo or sign shall not be construed to be a "vehicle sign."

**Sign, Wall:** A sign fastened to, or painted on, the wall of a building in such a manner that the wall becomes the supporting structure for, or forms that background surface of, the sign, and which does not project more than twelve (12) inches from such building.

**Sign, Window:** A sign, whether or not lighted, which is applied or attached to a window in such a manner that it can be seen from a public sidewalk, passageway, road, street or highway.

**Site Plan:** A scale drawing(s), including attachments, showing the relationship between the lot lines and building or structures, existing or proposed on a lot, including such details as parking areas, access points, landscaped areas, building areas, setbacks from lot lines, building heights, and densities.

**Site Plan Review:** The review of the site plan of any public or private project by the Planning Board. See also Article 7 of this Law.

**Slaughterhouse, Commercial:** A building used for the for-profit slaughtering of animals that are either raised or transported to the building and the processing and storage of animal products and waste that results from the slaughtering process.

**Slaughterhouse, Agricultural:** An accessory building on a lot used for agriculture, as defined herein, which is used for the nonprofit slaughtering of animals raised on the site, and the processing and storage of animal products and waste that results from the slaughtering process. A building used for seasonal deer processing, whether for profit or not for profit, shall be considered an agricultural slaughterhouse.

**Spa:** A commercial establishment which employs professional, licensed therapists whose services include massage and body or facial treatments. Treatments may include body packs and

wraps, exfoliation, cellulite and heat treatments, body toning, waxing, aromatherapy, cleansing facials, and electrolysis. Hydrotherapy and steam and sauna facilities, nutrition and weight management, spa cuisine and exercise facilities and instruction may be provided. A spa does not include overnight sleeping facilities. See also “athletic club.”

**Special Flood Hazard Area (SFHA):** Areas designated by the Federal Emergency Management Agency (FEMA) on the Town of Ellicottville Flood Insurance Rate Map (FIRM) as areas with a 1% annual chance of flooding, also known as the 100 year flood plain.

**Special Use:** Any use of land or buildings or both that require special approval from the Planning Board as described herein. See also Article 6 of this Law. A Special Use may also be referred to as a "conditional use."

**Storage Facility, Self-Service:** A building or buildings used for the storage of household goods and materials, in which individuals rent self-contained storage units that are exclusively available to the individual renter.

**Story:** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above.

**Story above grade:** Any story having its finished floor surface entirely above grade, except that a basement shall be considered as a story above grade where the finished surface of the floor above the basement is:

a. More than 6 feet above grade plane; and/or
b. More than 6 feet above the finished ground level for more than 50 percent of the total building perimeter; and/or
c. More than 12 feet above the finished ground level at any point.

**Story, half:** A story under a gable, hip or gambrel roof of which the wall on at least two opposite exterior walls are at least 4 feet above the floor. If the exterior walls are 7 ½ feet tall or higher, the space shall be considered to be a full story.

**Street:** See “Road.”

**Structure:** Anything constructed, the use of which requires fixed location on or in the ground, or attached to something having a fixed location upon the ground, and which imposes an impervious material on or above the ground; "structure" includes “building”. All structures, except driveways, sidewalks and fences, must maintain the minimum setbacks for the district in which they are located, both above and below the ground. Signs shall conform to the setbacks established in Article 12.

**Substantial Damage:** Damage of any origin sustained by a structure, where the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. (Market value shall be determined by dividing the assessed value by the equalization rate.)

**Substantial Improvement:** Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. (Market value shall be determined by dividing the assessed value by the equalization rate.) "Substantial improvement" includes structures which have incurred "substantial damage," regardless of the actual repair work performed. "Substantial Improvement" does not, however, include either:

(1) any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
(2) any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a historic structure.

**Supergraphics:** Any mosaic, mural, painting or graphic art or combination thereof which is professionally applied to a building, directly on the outer wall. Supergraphics may or may not contain a commercial message**.**

**Support Commercial Facilities:** Those commercial uses which are located on the site of a master planned development, and are intended, by their size and orientation within the MPD, to serve the needs of the residents or users of that development, and not the general public or persons drawn from off the site of the Master Planned Development.

**Tandem Parking:** A parking design which necessitates parking one vehicle behind another. See Article 5.

**Telecommunications Antenna:** A system of electrical conductors that transmit or receive radio frequency waves.

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

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

**Terminal, Cargo:** See “Cargo Terminal.”

**Terminal, Truck:** See “Truck Terminal.”

**Time and Temperature Unit:** A sign or portion of a sign displaying only current time and temperature in an electronic or digital fashion**.**

**Town:** Town of Ellicottville, New York.

**Town Board:** The Town Board of the Town of Ellicottville, County of Cattaraugus, State of New York.

**Town Clerk:** The Town Clerk of Ellicottville, New York.

**Town Engineer:** The licensed professional engineer designated by the Town Board to furnish engineering assistance for the administration of this Law.

**Trade School:** An educational facility, usually for profit, which provides instruction of industrial, clerical, managerial and/or secretarial skills, and similar vocational instruction.

**Transient Lodging:** A hotel, motel or inn**.**

**Triplex:** A structure containing three dwelling units, each of which has direct access to the outside. See also "Dwelling, Three Family."

**Truck terminal:** A facility for the receipt, transfer, short-term storage and dispatching of goods transported by truck. Included in the use would be express and other mail and package distribution facilities.

**Usable Open Space:** See "Open Space, usable."

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

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

**Vehicle Customizing Shop:** A commercial establishment which provides services for automobiles, motorcycles and other similar vehicles such as applying paint protectors, applying decorative paint stripes, as well as installation of after market accessories such as tinting, auto alarms, spoilers, sunroofs, headlight covers and similar items. No automobile repair shall be conducted as a "vehicle customizing shop."

**Warehouse:** A building used primarily for the storage of goods and materials.

**Wholesale Business:** Place of business primarily engaged in selling merchandise to retailers, to industrial, commercial, institutional or professional business users, or to other wholesalers, or acting as agents or brokers and buying merchandise for, or selling merchandise to, such individuals or companies. Retail sales may be allowed as an accessory use.

**Wind Energy Conversion System (WECS):** Any mechanism designed for the purpose of converting wind energy into electrical energy. A WECS may include one or more wind turbines,

towers, associated control or conversion electronics, transformers, and/or other maintenance or control facilities or other component used in the system. A WECS may be either a Utility-scale Wind Energy Conversion System or a small-scale Wind Energy Conversion System.

> **Utility-Scale Wind Energy Conversion System:** A wind energy conversion system that is intended solely to generate electrical power for sale to the power grid.
>
> **Small-Scale Wind Energy Conversion System:** A wind energy conversion system that is incidental and subordinate to another use on the same parcel and that supplies electrical power solely for on-site use, except that when a parcel on which a small-scale WECS is installed also receives electrical power supplied by a utility company, excess electrical power generated by the small-scale WECS and not presently needed for on-site use may be used by the utility company in exchange for a reduction in the cost of electrical power supplied by that company to the parcel for on-site use, as long as no net revenue is produced by such excess electrical power.

**Yard:** A required space on a lot other than a court, unoccupied and unobstructed by buildings from the ground upward, except as otherwise provided herein. Yard areas for below grade structures must be provided unless a variance is obtained.

**Yard, Front:** A required space between the front line of the main building and the front lot line or closer right-of-way line of an abutting road or right-of-way and extending across the full width of a lot. The "depth" of the front yard is the minimum distance between the front lot line and the front line of the closest building.

**Yard, Rear:** A required space between the rear line of the building and the rear lot line, or closer road and extending the full width of the lot. The "depth" of the rear yard is the minimum distance between the rear lot line and the building wall.

**Yard, Side:** A required space between the side line of the building and the side lot line and extending from the front yard to the rear yard. The "width" of the side yard shall be the minimum distance between the side lot line and the side line of the building.

**Zoning Board of Appeals:** The Zoning Board of Appeals of the Town of Ellicottville, NY.

**Zoning Districts:** The Districts as designated in the current Zoning Law of the Town of Ellicottville and referenced herein.

**Zoning Map:** The map or maps incorporated in the current Zoning Law of the Town of Ellicottville, which designates the various Zoning Districts.

**Zoning Official:** The official, appointed by the Town Board, who is responsible for the administration and enforcement of this Law.

**Zoning Permit:** A permit issued by the Zoning Official, prior to the issuance of a building permit, which certifies that a proposed structure or use meets all the regulations of this Law.

# ARTICLE 3
# DISTRICTS AND REGULATIONS

## Section 3.1 Conservation District (C)

### A. Purpose

The purpose of the Conservation District is to protect designated wetlands and floodplains, to mitigate geologic and flood hazards, and to establish and maintain important scenic corridors along major transportation routes.

### B. Uses

Allowable land uses in the Conservation District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Lot Size: The minimum lot size is five (5) acres, for a lot located entirely in the Conservation District. Where 50% or more of the lot is located in another zoning district (i.e., in cases where only the frontage of the lot is located in the Conservation District), the minimum lot size shall be the required minimum for the Zoning District in which the majority of the lot is located.

(2) Lot Width: The minimum lot width is 300 feet. Where less than half of the area of a lot is located in the Conservation District, the minimum lot width shall be the minimum for the Zoning District in which the majority of a lot is located.

### D. Minimum Dimensional Requirements

All buildings and structures shall be constructed a minimum of 100 feet from the front, rear and side property lines.

### E. Height

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

### F. Open Space

A minimum of 90 % of the total lot area shall be devoted to usable open space. For purposes of these regulations, use of the lot as agriculture and/or forestry, excluding structures, shall be considered to be open space.

## Section 3.2 Agricultural-Residential District (A-R)

### A. Purpose

The intent and purpose of the Agricultural-Residential District is to protect significant natural and scenic resources and the rural character of the town. Another purpose of this district is to provide an opportunity for the continuation of agricultural activities, which are historically important to the economy of the Town and which contribute to its appealing rural character. The Agricultural-Residential District is intended to provide an opportunity for low density residential development and also an opportunity for moderately priced housing.

### B. Uses

Allowable land uses in the Agricultural-Residential District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Lot Size: The minimum lot size is two (2) acres.

(2) Lot Width: The minimum lot width is 200 feet.

### D. Minimum Dimensional Requirements

(1) Front Yard Setbacks: All buildings and structures shall be constructed a minimum of 60 feet from the front property line.

(2) Rear Yard Setbacks: The principal building shall be constructed a minimum of 60 feet from the rear property line. Accessory buildings may be constructed to within 10 feet of the rear property line.

(3) Side Yard Setbacks: All buildings and structures shall be constructed a minimum of 30 feet from each side property line, with a total minimum combined side yard setback of 100 feet.

### E. Height

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

### F. Open Space

A minimum of 80% of the total lot area shall be devoted to usable open space. For purposes of these regulations, use of the lot as agriculture and/or forestry, excluding structures, shall be considered to be open space.

## Section 3.3 Low Density Residential District (LD)

### A. Purpose

The purposes of the Low Density Residential District are to allow residential uses in areas of developable land that will be compatible with the Town's development objectives and growth capabilities; to encourage the clustering of residential dwellings in order to preserve natural open spaces and minimize the cost of municipal services; and to allow commercial and recreational activities that are in harmony with residential neighborhoods.

### B. Uses

Allowable land uses in the Low Density Residential District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Lot Size: The minimum lot size is two acres.

(2) Lot Width: The minimum lot width is 150 feet.

### D. Minimum Dimensional Requirements

(1) Front Yard Setback: All buildings and structures shall be constructed a minimum of 50 feet from the front property line.

(2) Rear Yard Setback: The principal building shall be constructed a minimum of 35 feet from the rear property line. Accessory buildings may be constructed to within 10 feet of the rear property line.

(3) Side Yard Setback: All buildings and structures shall be constructed a minimum of 25 feet from the side property lines.

### E. Height

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

### F. Open Space

A minimum of 70% of the total lot area shall be devoted to usable open space**.**

## Section 3.4 Medium Density Residential District (MD)

### A. Purpose

The purposes of the Medium Density Residential District are to provide an opportunity for medium density residential development; to encourage the clustering of residential dwellings in order to preserve natural open spaces and minimize the cost of municipal services; and to allow recreational activities that are in harmony with residential neighborhoods.

### B. Uses

Allowable land uses in the Medium Density Residential District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Single Family Dwellings: The minimum lot size for a lot that contains one single-family dwelling is 12,500 square feet. The minimum lot width for a lot that contains one single-family dwelling is 80 feet.

(2) Multiple Unit Dwellings: The minimum lot size and lot width for lots that contain a building other than a single-family dwelling unit is shown in the table below:

Multiple Unit Dwellings

| Number of Units | Minimum Lot Size (in square feet) | Minimum Lot Width at the Front Setback Line (in feet) |
|---|---|---|
| Two | 20,000 | 90 |
| Three | 24,000 | 105 |
| Four | 28,000 | 120 |

(3) All Other Uses: The minimum lot size for all other uses is 20,000 square feet. The minimum lot width is 100 feet.

### D. Minimum Dimensional Requirements

(1) Front Yard Setback: All buildings and structures shall be constructed a minimum of 35 feet from the front property line.

(2) Rear Yard Setback: The principal building shall be constructed a minimum of 25 feet from the rear property line. Accessory buildings may be constructed to within 10 feet of the rear property line.

(3) Side Yard Setback: All buildings and structures shall be constructed a minimum of 15 feet from the side property lines.

**E. Height**

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

**F. Open Space**

A minimum of 60 percent of the total lot area shall be devoted to usable open space, except that for detached single family homes on an individual lot, a minimum of 50 percent usable open space shall be provided.

## Section 3.5 High Density Residential District (HD)

### A. Purpose

The purpose of the High Density Residential District is to provide an opportunity for a variety of high density residential development, including multiple-family structures and attached single-family homes. Other purposes of this District are to allow major commercial recreational facilities; to provide for the development of hotel and convention center accommodations, and to provide for appropriate commercial establishments that serve both visitors and residents.

### B. Uses

Allowable land uses in the High Density Residential District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Lot Size: The minimum lot size is 15,000 square feet.

(2) Lot Width: The minimum lot width is 80 feet.

### D. Minimum Dimensional Requirements

(1) Front Yard Setback: All buildings and structures shall be constructed a minimum of 35 feet from the front property line.

(2) Rear Yard Setback: All buildings and structures shall be constructed a minimum of 15 feet from the rear property line.

(3) Side Yard Setback: All buildings and structures shall be constructed a minimum of 15 feet from the side property lines.

### E. Height

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

### F. Open Space

For residential uses, including detached and attached single family homes, a minimum of 50 percent of the total lot area shall be devoted to usable open space. For commercial uses, including hotels, and other non-residential land uses, a minimum of 40 percent of the total lot area shall be devoted to usable open space.

## Section 3.6 General Commercial District (GC)

### A. Purpose

The purpose of the General Commercial District is to provide a location for retail trade and service uses, to serve both residents and visitors, which are compatible in scale and use with land uses in adjacent areas. Environmentally compatible light industrial uses, which would not have an adverse effect on adjacent properties, are also allowed.

### B. Uses

Allowable land uses in the General Commercial District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Lot size: Minimum lot size is 15,000 square feet.

(2) Lot Width: Minimum lot width is 80 feet.

### D. Minimum Dimensional Requirements

(1) Front Yard Setback: All buildings and structures shall be constructed a minimum of 35 feet from the front property line.

(2) Rear Yard Setback: All buildings and structures shall be constructed a minimum of 10 feet from the rear property line.

(3) Side Yard Setback: All buildings and structures shall be constructed a minimum of 15 feet from the side property lines.

### E. Site Requirements

(1) Loading and Unloading: The loading and unloading of goods shall take place entirely on the site. Loading areas shall be screened from general public view.

(2) Uses to be Within Enclosed Building: All uses except outdoor dining shall be conducted wholly within a completely enclosed building, except that the Planning Board may permit outdoor uses which it determines comply with the purposes of this section and which will not have an adverse effect on neighboring properties**.**

(3) A landscaped buffer yard shall be located in the front yard setback between the front property line and the parking lot or building wall. The buffer yard shall be a minimum of 20 feet in width. The Planning Board shall review the adequacy of the proposed landscaping.

## F. Height

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

## G. Open Space

For residential uses, including detached and attached single family homes, a minimum of 50 percent of the total lot area shall be devoted to usable open space. For commercial uses, including hotels, and other non-residential land uses, a minimum of 30 percent of the total lot area shall be devoted to usable open space.

## Section 3.7 Industrial District (I)

### A. Purpose

The purpose of the Industrial District is to provide an opportunity for office, warehousing and light industrial development, in order to diversify the economic base of the Town of Ellicottville and to provide employment opportunities for residents.

### B. Uses

Allowable land uses in the Industrial District shall be limited to those uses shown on the Land Use Table as either permitted or special permitted uses within this zoning district. All other uses are prohibited.

### C. Minimum Lot Size and Width

(1) Lot size: Minimum lot size is 15,000 square feet.

(2) Lot Width: Minimum lot width is 80 feet.

### D. Minimum Dimensional Requirements

(1) Front Yard Setback: All buildings and structures shall be constructed a minimum of 35 feet from the front property line.

(2) Rear Yard Setback: All buildings and structures shall be constructed a minimum of 20 feet from the rear property line.

(3) Side Yard Setback: All buildings and structures shall be constructed a minimum of 20 feet from the side property lines.

### E. Height

Buildings and structures shall not exceed the maximum height as described in Section 3.9C of these regulations**.**

### F. Open Space

A minimum of 30 percent of the total lot area shall be devoted to usable open space.

### G. Performance Standards

(1) The use shall be located and conducted entirely within a building or buildings.

(2) The use shall be conducted in such a manner as to prevent hazard or annoyance to the community.

(3) The use will not create glare, heat, odor, dust, smoke, noise, or physical vibrations perceptible outside the building walls, except as may be normal for a residential or retail use.

(4) The use will not create a danger of explosion.

(5) Any open areas that are used for parking or for storage of raw materials or finished products shall be screened by a landscaped berm or other means as approved by the Planning Board.

(6) No vehicular parking shall be permitted in a public right-of-way.

(7) Loading and unloading of goods shall take place entirely upon the site. Loading areas shall be screened from view from the public right-of-way.

(8) Utilities shall be placed underground.

(9) No industrial structure shall be closer than 140 feet to an existing residential building.

(10) Where an Industrial Zoning District abuts an MD or LD Zoning District or abuts a residential use in the HD zoning district, a buffer yard in accordance with the provisions of Section 12.6C(6) of this Law shall be required.

## Section 3.8 Schedule of Requirements – Land Use Table:

To facilitate public understanding of this Law and for better administration and convenience of use thereof, the following schedule of permitted uses and uses permitted by Special Use Permit for the various zoning districts is hereby adopted and declared to be a part of this Law, and may be amended in the same manner as any other part of this Law.

In each zoning district any use category not expressly permitted shall be deemed **prohibited.** In using the following table, the letter "P" indicates a permitted use, the letter "S" indicates that a special use permit granted by the Planning Board is required, and "NP" indicates a use that is not permitted in the zone.

If a question arises as to whether a specific use does or does not come within the following expressed use categories, any person may apply to the Planning Board for a determination as to whether a specific use is expressly permitted.

## LAND USE TABLE

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Residential and Quasi-Residential Uses*** | | | | | | | |
| Single family detached dwelling | P | P | P | P | P | S | P |
| Two family dwelling; duplex | S | P | P | P | P | S | P |
| Three family dwelling; triplex<br>Four family dwelling; fourplex | NP | S | S | S | S | S | NP |
| Multiple family dwelling, more<br>than four dwelling units | NP | S | NP | S | S | S | NP |
| Accessory Apartments | S | S | S | S | S | S | NP |
| Rental of dwellings for periods<br>less than 30 days | P | P | P | P | P | P | NP |
| Rental of dwellings for periods<br>of 30 days or longer | P | P | P | P | P | P | NP |
| Manufactured Homes/Mobile homes<br>as a single family home on one lot | NP | P | S | NP | NP | NP | NP |
| Manufactured Home Parks<br>Mobile home parks | NP | NP | NP | NP | NP | NP | NP |
| Bed & Breakfast establishments | NP | S | S | S | S | S | NP |
| Boarding houses with fewer than<br>6 rooms available for rent | NP | S | S | S | S | S | NP |
| Boarding houses with more than<br>5 rooms available for rent | NP | NP | NP | S | S | S | NP |
| Hotel, motel, inn | NP | NP | NP | S | S | S | NP |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Master Planned Developments*** | | | | | | | |
| Master Planned Development with Residential Uses only | NP | S | S | S | S | S | NP |
| Master Planned Development with residential and transient lodging (hotel, motel, inn) uses only | NP | S | S | S | S | S | NP |
| Master Planned Development, with residential and/or transient lodging, that includes one or more of the following: support commercial facilities and/or commercial recreation facilities | NP | S | S | S | S | S | NP |
| Master planned development with Residential and/or transient lodging that includes one or more of the following: commercial uses designed for general public use rather than support commercial facilities and/or commercial recreation facilities | NP | NP | NP | NP | S | S | NP |
| Master Planned Development with commercial uses only, (No residential or transient lodging uses) | NP | NP | NP | NP | S | S | S |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Public and Quasi-public uses*** | | | | | | | |
| Public and quasi-public uses, such as: churches and other houses of worship**;** public schools; private schools with curriculum similar to public schools, civic facilities | NP | S | S | S | S | S | S |
| Essential municipal and public utility uses, facilities, services and buildings (provided business offices, and repair, storage, and/or production facilities not included) | S | S | S | S | S | S | S |
| Group care facilities, including halfway houses, rehabilitation centers, group foster care, senior citizen group homes | NP | S | S | S | S | S | NP |
| Colleges | NP | S | S | S | S | S | NP |
| Parks | S | S | S | S | S | S | NP |
| ***Agricultural and Related Uses*** | | | | | | | |
| Agriculture and forest land, but not keeping of livestock, and not retail sales | P | P | P | P | P | P | P |
| Keeping of livestock | P | P | P | S | NP | NP | S |
| Activities for conservation of soil, water and wildlife | P | P | P | P | P | P | P |
| Farm Stand | S | P | S | S | S | S | S |
| Produce Stand | P | P | P | P | P | P | P |
| Plant nursery | S | P | S | S | S | S | S |
| Greenhouses | S | P | S | S | S | S | S |
| Kennels | S | S | S | NP | NP | NP | NP |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Commercial, Service and Commercial Recreation Uses*** | | | | | | | |
| Professional offices, medical and dental clinics, business offices | NP | S | S | S | S | S | S |
| Commercial parking lot or garage | NP | NP | NP | S | S | S | S |
| Commonly owned garage for four or more cars, above grade or below, and not connected to dwellings or commercial structures | NP | NP | NP | S | S | S | S |
| General Retail establishments limited to the following and similar uses: antique store, art gallery, art supply store, bakery, book store, camera store, clothing store, candy store, tobacco and cigarette store, florist, grocery store, gift shop, liquor store office supply store, pharmacy, sporting goods store, hardware store, department store and variety store | NP | NP | NP | NP | S | S | S |
| Service Retail establishments such as financial institutions; travel agency, copy shop and business support services | NP | NP | NP | NP | S | S | S |
| Bulk merchandise retail establishments**,** automobile sales establishments, and Service commercial establishments limited to the following and similar uses: automobile rental customer outlets; | NP | NP | NP | NP | NP | S | S |
| Arts and crafts studios | NP | P | S | S | S | S | S |
| Artisan's Workshops | NP | P | NP | NP | NP | S | S |
| Personal service establishments, including barber & beauty shops; tailoring; shoe repair; jewelry repair; dry cleaning pick-up station; laundromat and similar services | NP | NP | NP | NP | S | S | S |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Commercial, Service and Commercial Recreation Uses (Continued)*** | | | | | | | |
| Service commercial establishments limited to the following and similar uses: catering service, mortuary, and radio or television broadcast facility (but not including transmission towers) | NP | S | S | S | S | S | S |
| Service commercial establishments limited to the following & similar uses: automobile repair shop vehicle customizing shop (but not an automobile body shop); small engine repair car wash; commercial dry cleaning and laundry establishments; and auto rental storage lot | NP | S | NP | NP | NP | S | S |
| Shopping plaza | NP | NP | NP | NP | NP | S | S |
| Animal hospital | NP | S | S | S | S | S | S |
| Gasoline service station | NP | NP | NP | NP | NP | S | S |
| Restaurant | NP | S | NP | NP | S | S | NP |
| Restaurant, outdoor dining | NP | S | NP | NP | S | S | NP |
| Restaurant, drive in, or drive up window | NP | S | NP | NP | S | S | NP |
| Bar, tavern, fraternal organization, brew pub | NP | S | NP | NP | S | S | NP |
| Micro-brewery Micro-distillery | NP | S | NP | NP | NP | S | S |
| Movie theatre, Performing arts center | NP | S | NP | NP | S | S | NP |
| Indoor commercial recreation facilities, such as bowling alleys, skating rinks and similar facilities | NP | S | NP | NP | S | S | NP |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Commercial, Service and Commercial Recreation Uses (Continued)*** | | | | | | | |
| Outdoor commercial recreation facilities, such as ski resorts, water parks, snow tubing parks, tennis courts, and similar facilities, but not including facilities for riding ATVs | S | S | S | S | S | S | S |
| Golf courses | S | S | S | S | S | S | S |
| Passenger tramway stations and base facilities | S | S | S | S | S | S | S |
| Liftway, no loading or unloading | S | S | S | S | S | S | S |
| Riding stables, riding academy | S | S | S | NP | NP | NP | NP |
| Campgrounds | NP | S | S | NP | NP | NP | NP |
| Athletic club, racquet club, gymnasium, spa, and similar facilities | NP | S | S | S | S | S | S |
| Recreation facilities owned by a private home owner for own use | P | P | P | P | P | P | P |
| Recreation facilities owned by property owners association for private use by members, including tennis court and swimming pool | S | S | S | S | S | S | S |
| Adult Uses, including the following and similar uses: Adult Entertainment Cabaret, Adult Theater, Adult Arcade, Adult Massage Establishment, Adult Motels or Hotels, Adult Movie Theater, Adult Retail Store, Adult Body Painting Studio, or Adult Model Studio | NP | S | NP | NP | NP | NP | NP |
| Self-Service Storage Facility | NP | NP | NP | NP | NP | S | S |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Commercial, Service and Commercial Recreation Uses (Continued)*** | | | | | | | |
| Building supply store; sales of home, garden and farm supplies, with associated storage | NP | S | NP | NP | NP | S | S |
| Trade schools; Art schools | NP | NP | NP | NP | NP | S | S |
| Automobile Body Shop | NP | NP | NP | NP | NP | NP | S |
| Farmers' Market | NP | S | S | S | S | S | S |
| Food Stand | NP | S | NP | NP | NP | S | S |
| ***Industrial and Related Uses*** | | | | | | | |
| Sawmills | NP | S | NP | NP | NP | NP | S |
| Lumber drying kilns<br>Lumber milling and storage | NP | S | NP | NP | NP | NP | S |
| Mining, sand & gravel extraction | | | | | | | |
| Commercial Mining | NP | S | NP | NP | NP | NP | NP |
| Incidental Mining | NP | S | NP | NP | NP | NP | NP |
| Agricultural Processing | NP | S | NP | NP | NP | NP | S |
| Food Processing Establishments | NP | NP | NP | NP | NP | NP | S |
| Bulk fuel storage | NP | S | NP | NP | NP | NP | S |
| Junk Yard | NP | NP | NP | NP | NP | NP | NP |
| Recycling Facility | NP | NP | NP | NP | NP | NP | S |
| Truck and cargo terminals | NP | NP | NP | NP | NP | NP | S |
| Warehouse<br>Wholesale business | NP | NP | NP | NP | NP | S | S |
| Contractors' yard | NP | P | NP | NP | NP | NP | S |
| Contractor's Shop | NP | P | NP | NP | NP | S | S |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Industrial and Related Uses (Continued)*** | | | | | | | |
| Printing plant<br>Publishing and engraving enterprises | NP | NP | NP | NP | NP | S | S |
| Product assembly | NP | S | NP | NP | NP | S | S |
| Machine Shop | NP | S | NP | NP | NP | S | S |
| Research and Development facility | NP | S | NP | NP | NP | NP | S |
| ***Accessory Uses*** | | | | | | | |
| Accessory building and/or use<br>on the same lot as the principal use | P | P | P | P | P | P | P |
| Accessory building and/or use<br>not on the same lot as the<br>principal use. | S | S | S | S | S | S | S |
| Home occupations, Major | S | S | S | S | S | S | NP |
| Home occupations, Minor | P | P | P | P | P | P | NP |
| Home Retail & Service Trade | S | S | S | S | S | S | NP |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Temporary Uses*** | | | | | | | |
| Temporary building for construction project management and equipment storage, after issuance of building permit | S | P | P | P | P | P | P |
| Temporary sales office and/or model home, on site of approved subdivision or other residential development | S | S | S | S | S | S | NP |
| Temporary building or trailer for living purposes during the period that construction work on a residence under a valid building permit is in progress, for a period not to exceed that of the validity of the building permit | S | P | P | S | NP | NP | NP |
| Recreation and vacation trailers used for temporary habitation (See Section 12-3) | NP | S | NP | NP | NP | NP | NP |

| USE – DESCRIPTION | C | A-R | LD | MD | HD | GC | I |
|---|---|---|---|---|---|---|---|
| ***Miscellaneous uses*** | | | | | | | |
| Day care centers, for children and adults; and Child nurseries | NP | S | S | S | S | S | S |
| Hospital, Nursing Homes | NP | S | NP | NP | S | S | NP |
| Cemetery | NP | S | S | NP | NP | NP | NP |
| Commercial and Private Airports | NP | S | NP | NP | NP | NP | NP |
| Telecommunications Towers | NP | S | NP | NP | NP | NP | S |
| Utility-scale Wind Energy Conversion System (WECS) | NP | S * | NP | NP | NP | NP | NP |
| * not allowed on ridgelines designated as significant on Comprehensive Plan Map | | | | | | | |
| Small-scale Wind Energy Conversion System (WECS) | NP | P/S * | NP | NP | NP | NP | NP |
| * Permitted when meet certain criteria, as specified in Section 12.13 of this Law; otherwise requires special use permit. However, not allowed on ridgelines designated as significant on Comprehensive Plan Map | | | | | | | |

## Section 3.9 Dimensional Regulations

### A. Corner Lots

In all Zoning Districts, for a corner lot, any side of the lot with frontage on a road shall be considered to be a front lot line for purposes of determining the building setback and required yard. On corner lots, both the principal and accessory structures shall maintain the front yard setback for all yards that have frontage on a road.

### B. Setbacks For Driveways and Parking Lots

(1) The minimum setbacks for buildings and structures in this Law shall also apply to parking lots for use by more than four vehicles and the driveways serving those lots, except that a driveway may cross the front yard setback in order to provide access to the lot. Nevertheless, parking lots that serve commercial and industrial land uses in the HD, GC, and I zoning districts may come to within 20 feet of the front property line. However, the parking lots for residential and transient lodging uses in these districts shall maintain the same front yard setback as the principal building.

(2) Driveways, except for driveways that serve detached single family homes or a single duplex, shall not be located within the side yard setbacks. Also see Article 5.

### C. Height

All buildings and structures shall comply with the following regulations:

(1) **Maximum Height**

a. No building or structure may exceed 35 feet in height, as defined in Article 2 of this Law, unless a taller height for a building and/or structure is otherwise permitted in Section 3.9C(3) of these regulations.

b. In addition to the height limit in feet, no attached single family home, detached single family home, or duplex shall exceed 2 ½ stories in height. For purposes of calculating a half-story, basements above grade and/or walk out basements shall not be considered to be a half-story. However, lofts and other areas that meet the definition of half-story shall be considered to be a half-story for purposes of calculating height.

(2) **Measurement of Height**

As defined in Article 2, height for all buildings and structures shall be measured from the adjacent ground elevation of the finished or natural grade, whichever grade is lower. Height shall be measured at the lowest point where the natural or finished grade meets the foundation wall. See Figure 1.

Height shall be measured to the following part of the roof:

a. For flat roofs or roofs with a slope of 3:12 or lower, height shall be measured to the highest point on the roof. See Figure 3.

b. For mansard roofs, height shall be measured to the deck line. For purposes of this section, the deck line is the point at which the pitch of the roof changes (the inflection point). See Figure 5.

c. For hip, gable or gambrel roofs where the slope of the roof is higher than 3:12, height shall be measured to a point midway between the highest ridge of the building and the lowest point on the corresponding eve. See Figures 2 and 4.

In order to allow an accurate measurement of the height of any proposed building or structure, or any addition to any building or structure, the Building Official may require an applicant to present building elevations on all four sides of a building and/or structure, with the plane of the allowable height, the natural grade and the finished grade all shown.

(3) **Exemptions to Height Limit**

The following buildings, structures and architectural features may exceed the maximum height provisions of this Law, to the extent provided below.

a. Chimneys, exhaust stacks, ventilators, antennas, skylights, tanks, bulkheads, solar panels and similar features may exceed the height limit, provided that they do not extend more than four feet above the highest ridge of the building with which they are associated.

b. Unroofed an unenclosed Widow's Walks shall be exempt from the height limitations of this Law, provided that they do not extend more than eight feet above the highest ridge of the building on which they are located.

c. The planting materials on "Green" roofs, defined as roofs planted with grass and other vegetation, shall be exempt from the height limitation of this Law, provided that the roof itself conforms to the maximum height regulations of the zoning district in which the building and/or structure is located.

d. Domes, towers, bell towers, cupolas or spires which are an integral part of churches or other houses of worship shall be exempt from the height limitations of this Law, provided that such features shall in no way be used for independent habitable space, as defined by the NYS Uniform Fire Prevention and Building Code.

e. Telecommunications towers, broadcasting and microwave transmitting and relay towers and electric transmission line towers shall be exempt from the height limitations of this Law.

f. Ski lift towers and towers for snowmaking equipment shall be exempt from the height limitations of this Law.

g. Flagpoles shall be exempt from the height limitations of this Law.

h. Agricultural buildings, such as barns, silos, stables and riding arenas shall be exempt from the height limitations of this Law.

i. Exceptions for certain commercial buildings:

In the General Commercial (GC) Zoning District and in the High Density Residential (HD) Zoning District, the following types of commercial buildings may be constructed to a height not to exceed 45 feet:

- Multi-dwelling structure, more than eight dwelling units, but not including attached single family structures
- Hotel, Motel or Inn with 16 or more rooms available for rent
- Mixed occupancy building with retail on the ground floor and apartments or hotel space above
- Ski lodges, administrative buildings associated with ski resorts or other permitted commercial recreation resorts, and similar buildings

j. Exceptions in the Industrial (I) Zoning District

In the Industrial (I) Zoning District, industrial buildings and structures (i.e. buildings and structures used for permitted and special permitted industrial uses) may be constructed to a height not to exceed 45 feet.

k. A utility-scale WECS may exceed the height limit up to a height of 450 feet.

l. A small-scale WECS may exceed the height limit up to a height of 150 feet.

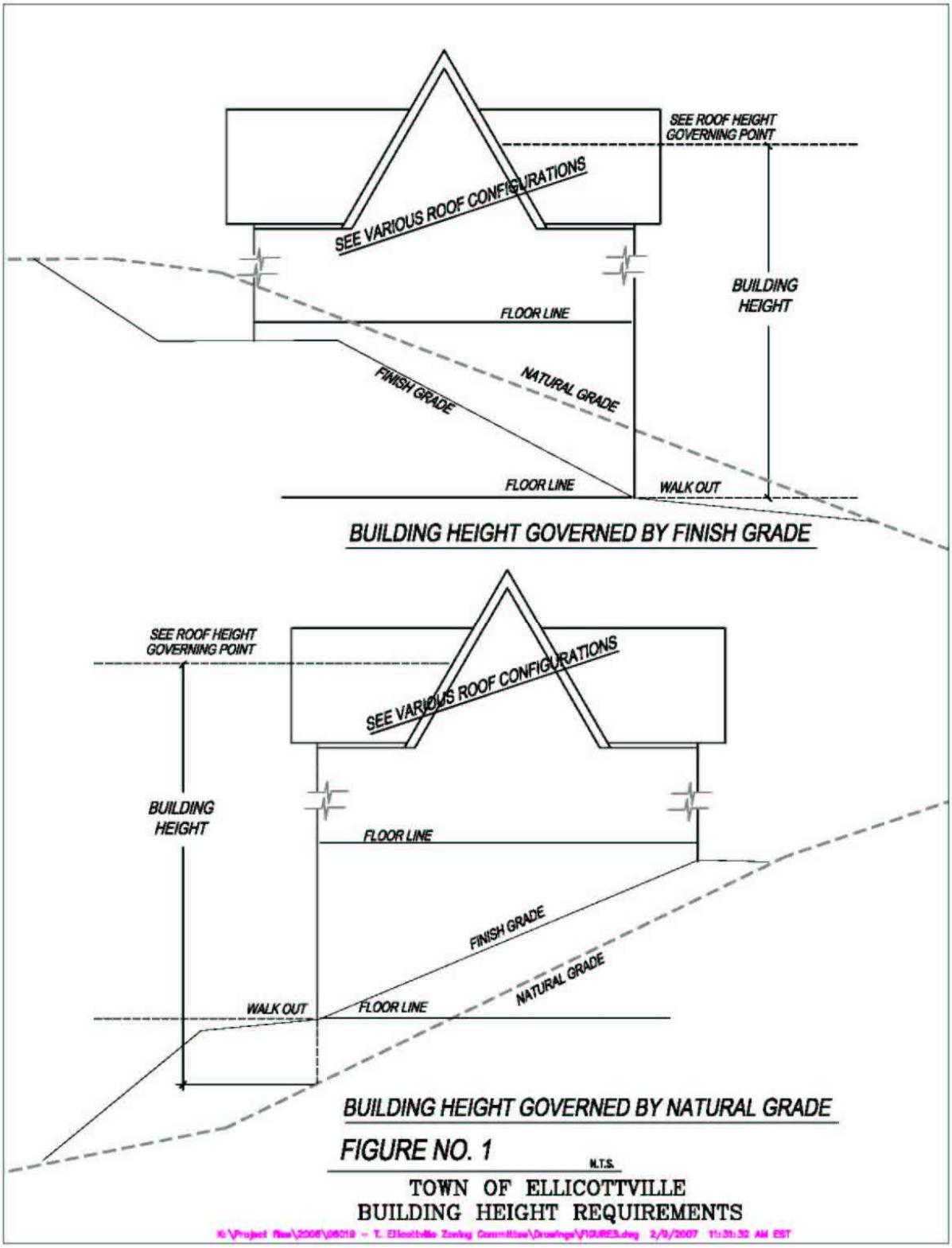



FIGURE NO. 1 N.T.S.

TOWN OF ELLICOTTVILLE
BUILDING HEIGHT REQUIREMENTS

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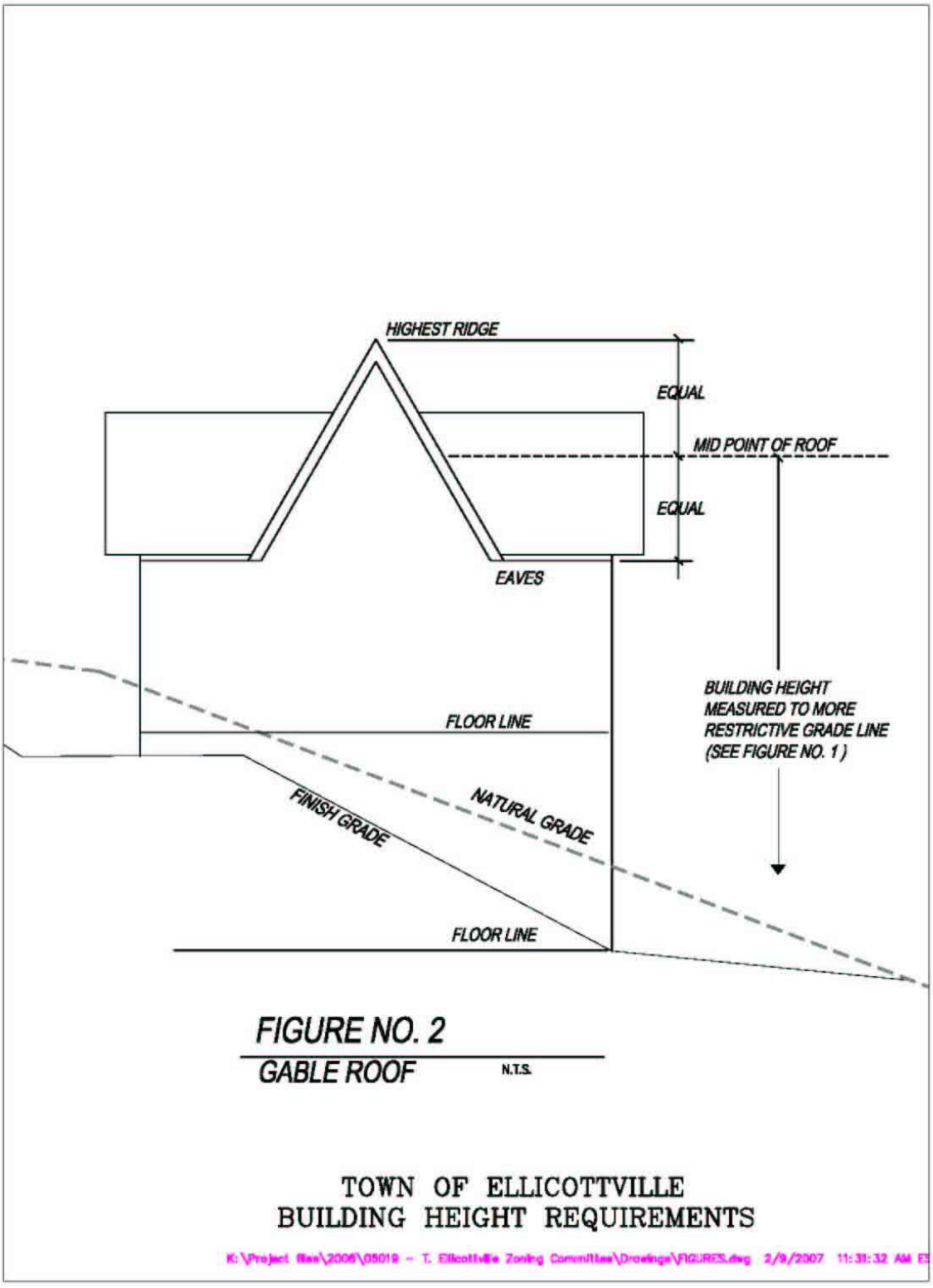



FIGURE NO. 2

GABLE ROOF N.T.S.

TOWN OF ELLICOTTVILLE
BUILDING HEIGHT REQUIREMENTS

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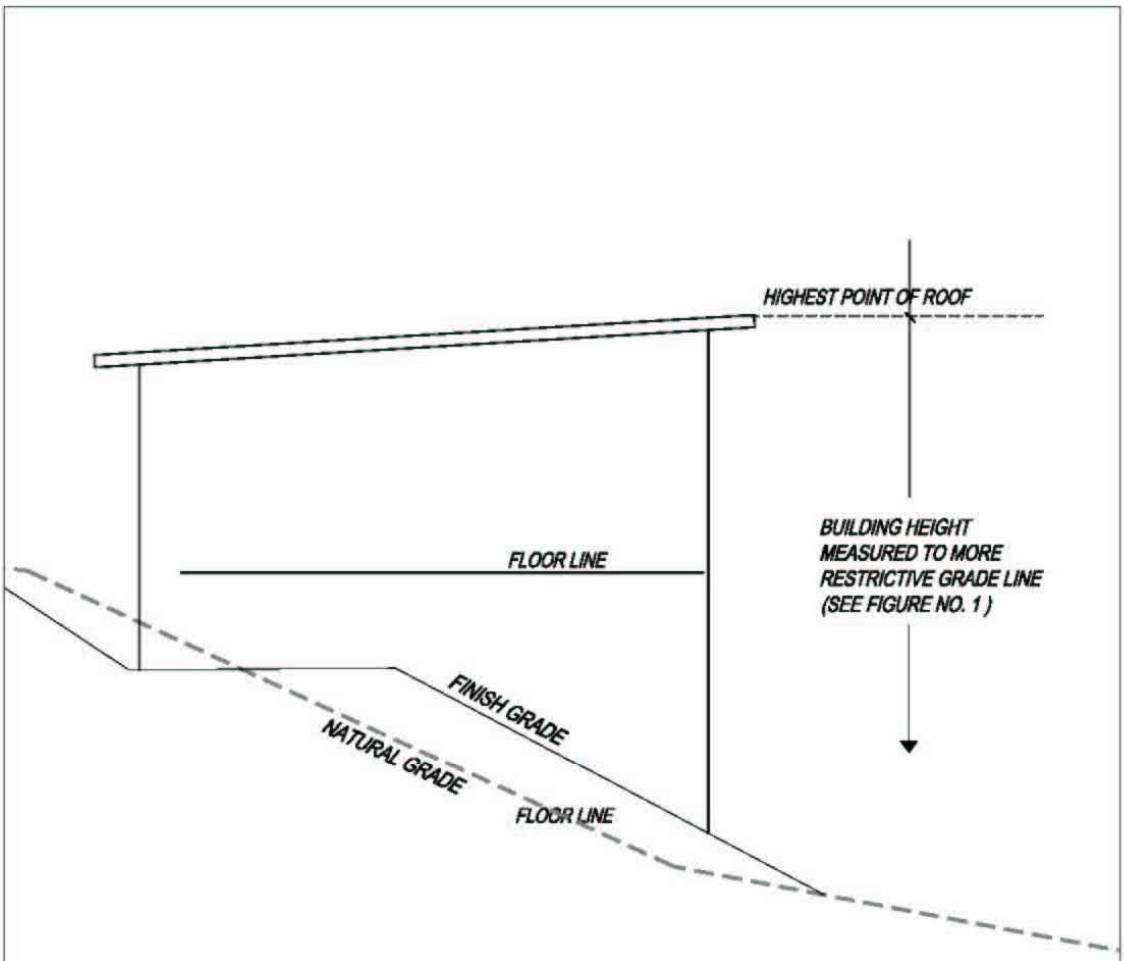



FIGURE NO. 3

FLAT ROOF N.T.S.

TOWN OF ELLICOTTVILLE
BUILDING HEIGHT REQUIREMENTS

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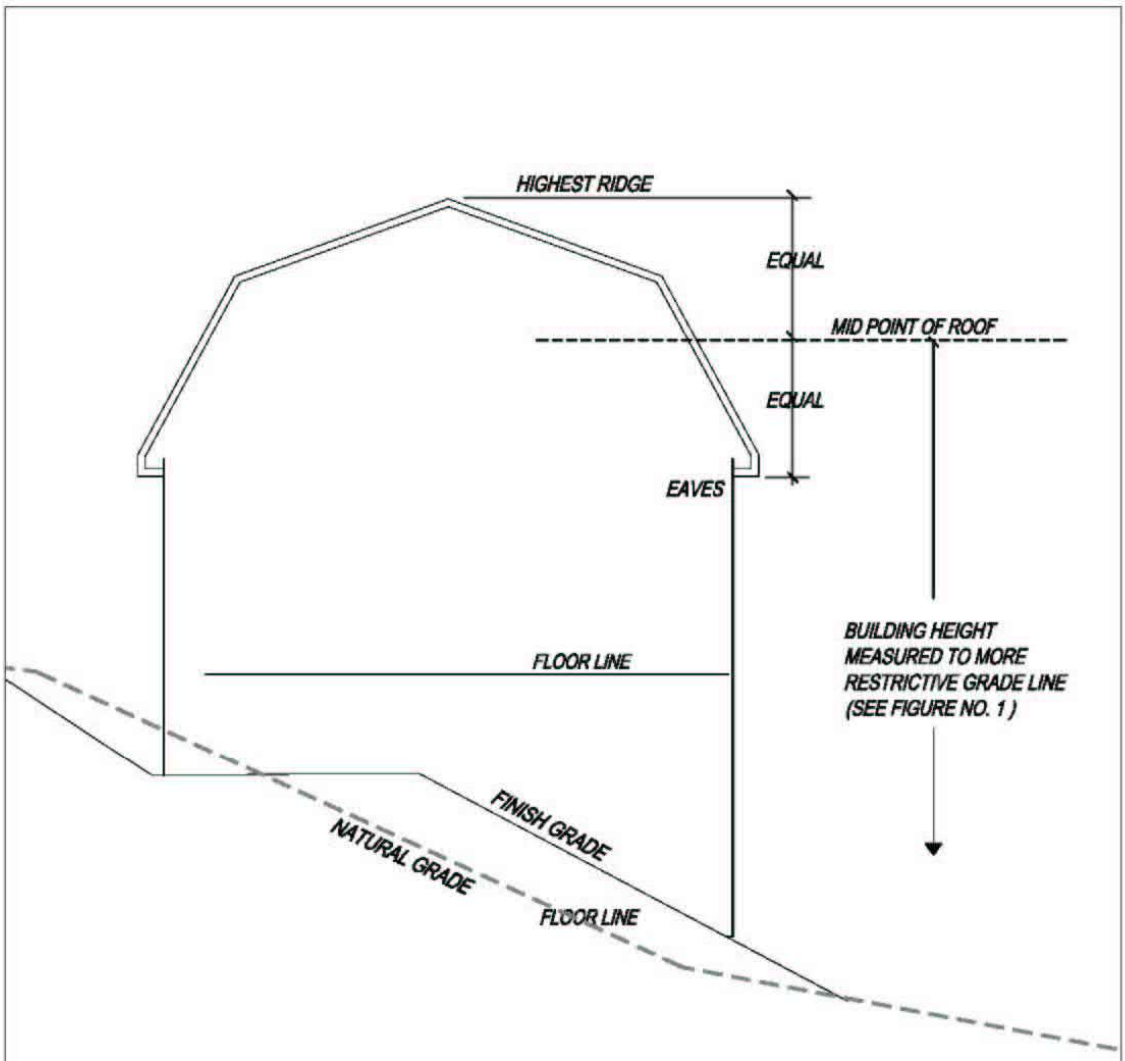



FIGURE NO. 4

GAMBREL ROOF N.T.S.

TOWN OF ELLICOTTVILLE
BUILDING HEIGHT REQUIREMENTS

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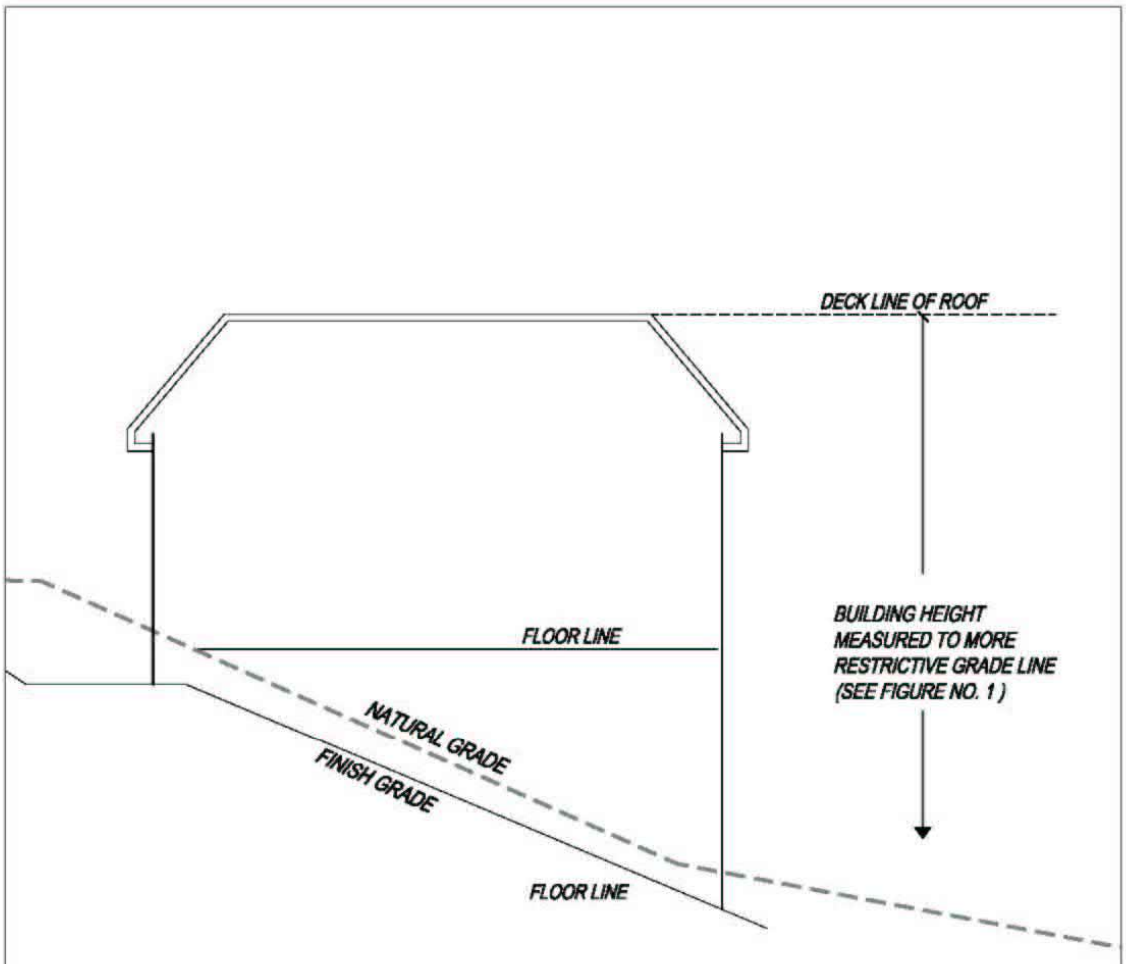



FIGURE NO. 5

MANSARD ROOF N.T.S.

TOWN OF ELLICOTTVILLE
BUILDING HEIGHT REQUIREMENTS

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## D. Retail Size Cap

### (1) Purpose

Much of Ellicottville's charm, for both residents and visitors, is the small scale of the community, which includes small-scale retail shops. The following limitations on the size of retail establishments are intended to maintain the character of the community and preserve a feature that is valued by visitors and residents.

### (2) Applicability

This retail size cap shall apply to all retail establishments and service commercial establishments in the Town of Ellicottville, except the following:

a. Non-retail commercial uses
b. Automobile, truck, recreational vehicle and similar vehicle sales
c. Sales of farm machinery and supplies
d. Sales of building supplies

### (3) Retail size cap

Retail establishments and service commercial establishments shall not exceed 60,000 square feet of gross floor area on any one floor.

For the purposes of this subsection, the term "gross floor area" shall include indoor and outdoor space utilized for retail display and sale of goods. No combination of structures, or structures and outside retail display and sales areas on the same or on contiguous lots or parcels shall exceed 60,000 square feet in gross floor area for a single retail establishment. A retail establishment containing more than one structure, which is in one ownership or management, whether located on a single parcel or contiguous parcels, shall be considered to be a single retail establishment for purposes of this section.

## E. Maximum Building Length

All attached structures and large structures shall comply with the following requirements, which shall apply to all facades of a building, not just the front facade:

(1) Structures greater than 60 feet but less than 120 feet in length should exhibit a prominent shift in the facade of the structure so that no greater than 75% of the length of the building facade appears unbroken. Each shift shall be in the form of either a ten foot change in building facade alignment or a ten foot change in roof line height, or a combined change in facade and roof line totaling ten feet. This requirement shall not apply to detached single family or detached two family dwellings.

(2) Structures that exceed 120 feet in length shall comply with the following standards:

a. A prominent shift in the mass of the structure shall occur at each 120 foot interval (or

less) reflecting a change in function or scale. The shift shall be in the form of either a 15 foot change in building facade alignment or a 15 foot change in foot line.

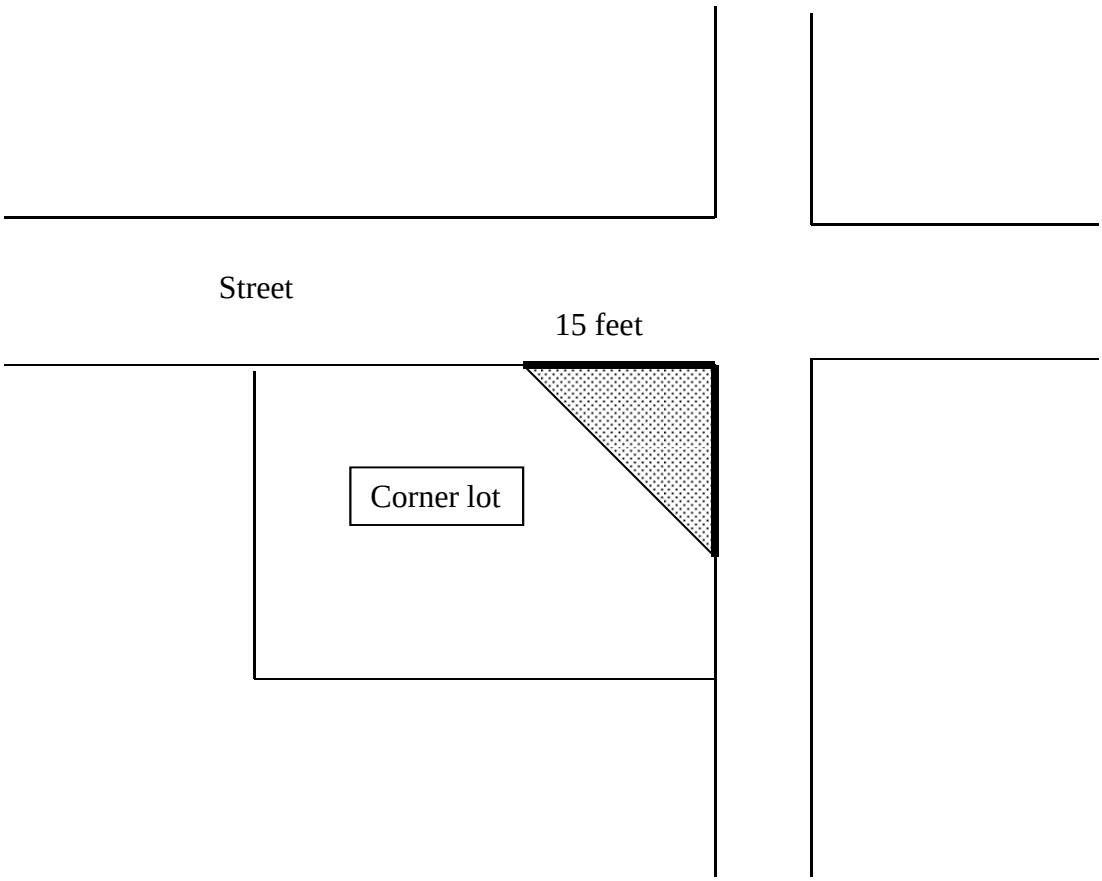
b. A combination of both a roof line and a facade change is encouraged and to that end, if the combined change occurs at the same location in the building plane, a 15 foot total change will be considered as compliance with this section.

**F. Visual Clearance at Intersections and Driveways**

For public safety, no obstruction to view, from signs, fences, walls, hedges, landscaping, or other structures, for either pedestrians or vehicles, shall be permitted at intersections of roads or where driveways access a street. To this end, the following clear areas shall be maintained.

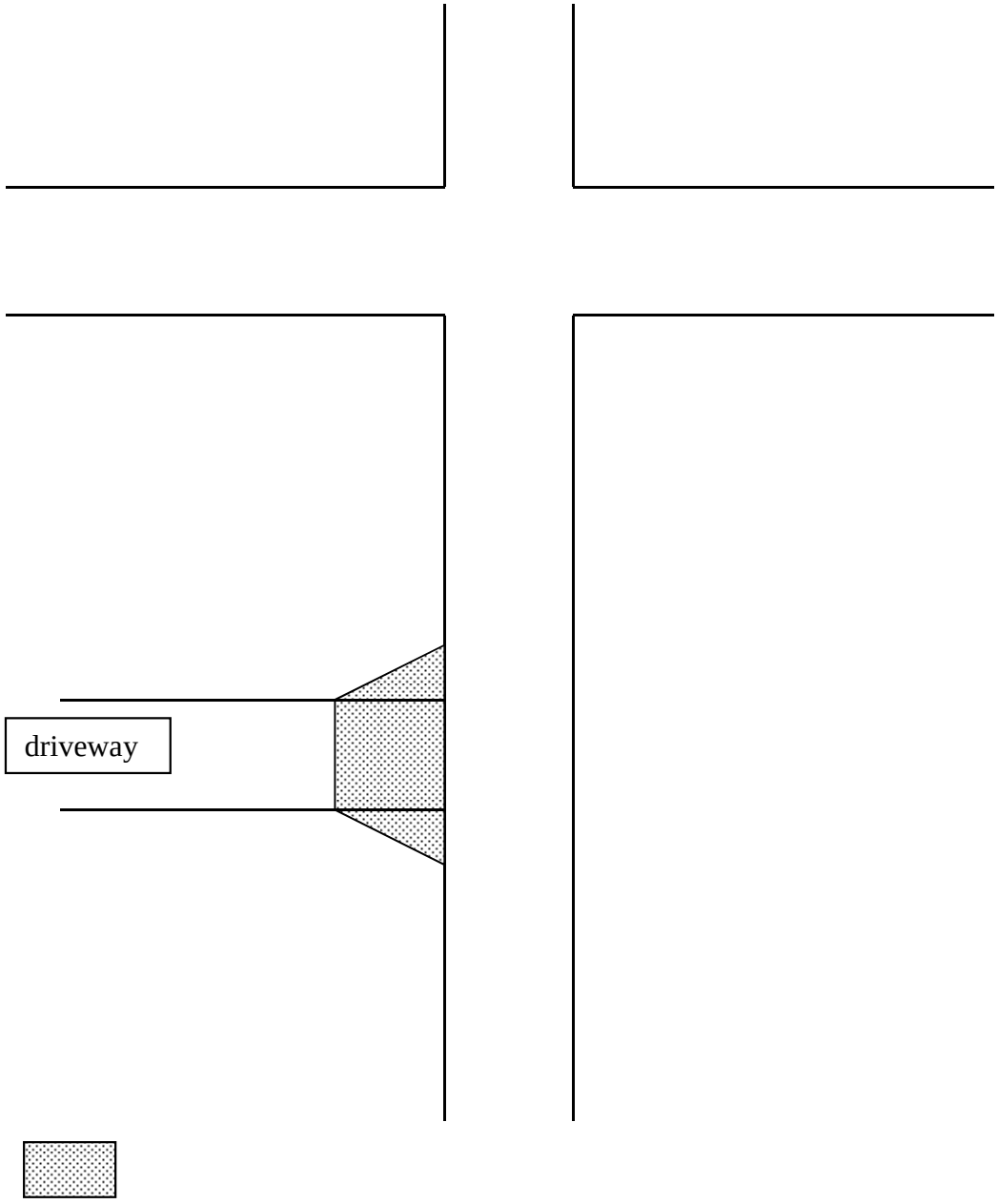
(1) On any corner lot, no fence, wall, hedge or other structure or planting, which interferes with visibility from motor vehicles, shall be permitted within the sight triangle. The sight triangle is the triangular area formed by the edge of the paved road or curbline and a line drawn between two points along such paved road or curbline, each such point being 15 feet distant from the intersection. The measurement will be taken from the curbline, or from the edge of the paved roadway, in cases where there is no curb. (See Figure 6).

(2) On any lot where a private driveway enters a road, no obstruction to visibility from motor vehicles, which is between three (3) feet above ground level and ten (10) feet above ground level, shall be located within the triangular area formed by the edge of the sidewalk (or edge of paved road or curbline, in cases where there is not sidewalk) the private driveway line and a line connecting them, beginning ten (10) feet from their intersection. In addition, the driveway itself shall be kept free of obstructions to visibility to a depth of 10 feet from the right-of-way line. (See Figure 7).




**Sight Triangle:** No obstruction to visibility permitted within the sight triangle.

**Figure 6. Sight Triangle at Intersections**




**Sight Area:** No obstruction to visibility from motor vehicles between three feet and ten feet permitted within the sight area.

**Figure 7. Sight Area at Driveways**

**G. Density of lots not served by Sanitary Sewers**

All development at densities greater than one dwelling unit per acre shall be required to construct sanitary sewers to collect wastewater generated in the development and to discharge the collected sanitary sewerage into the existing municipal sewage treatment facility or to provide a package sewage treatment facility as approved by the appropriate state, county and local agencies.

**H. Density of lots in excess of 25% slope**

As stated in Section 12.10 of this Law, where a lot has an average slope in excess of 25 %, the maximum density for that lot shall be calculated at the density of one dwelling unit per three acres.

**I. Measurement Rules**

(1) For lots where the deeded lot extends to the centerline of a roadway, all required setbacks shall be measured from the right-of-way line.

(2) For lots where the deeded lot extends to the centerline of a roadway, the lot area shall be determined by excluding the area within the right-of-way.

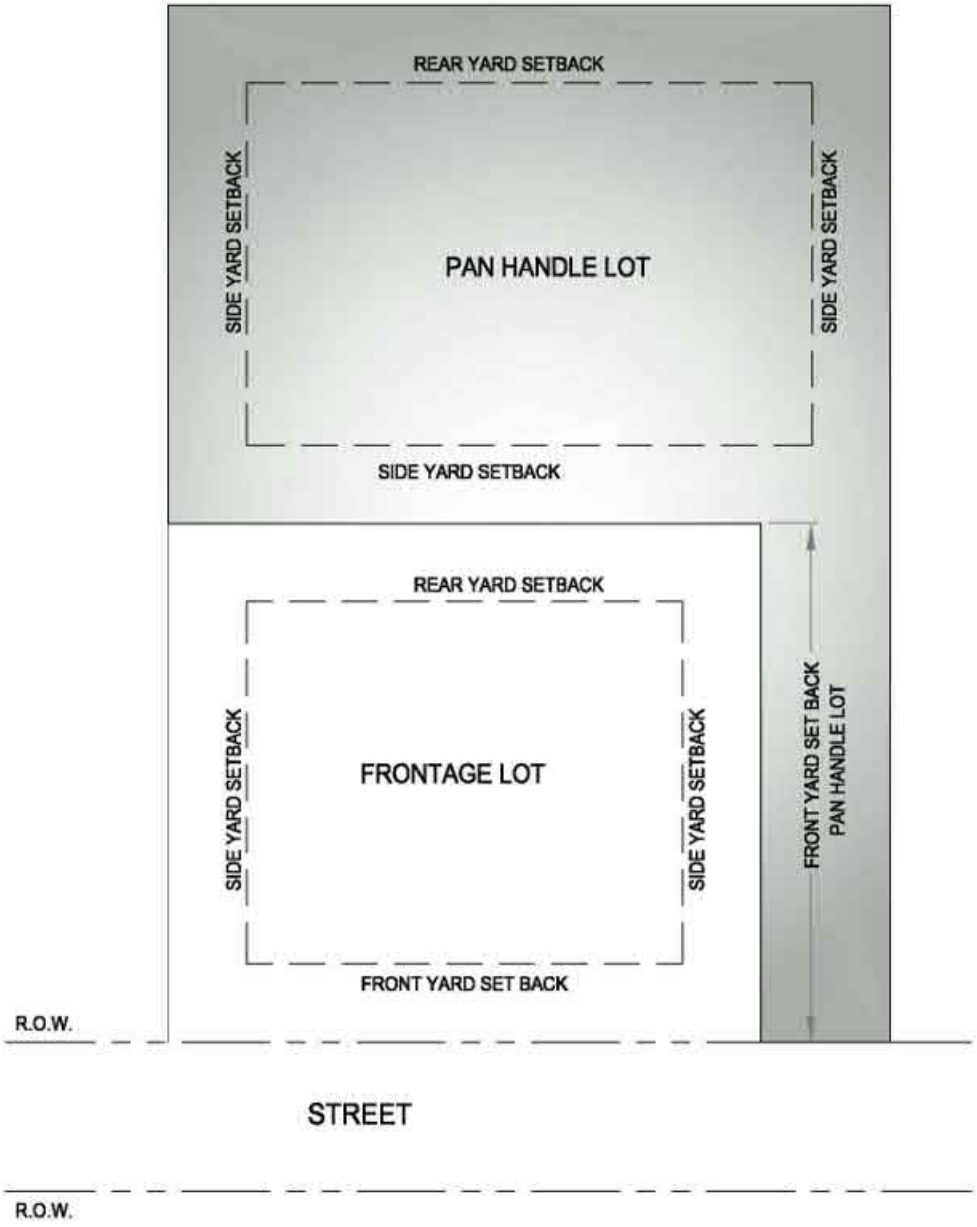
(3) The lot width shall be measured at the front setback line.

(4) Setbacks for Panhandle lots: In general, the front yard setback will fall within the area reserved for access to a panhandle lot. Therefore, the side closest to and parallel to the road shall be considered a side yard, for purposes of calculating required setbacks. (See Figure 8).

(5) Setbacks for buildings and structures shall be measured at the foundation walls or supports. Decks, porches, carports and similar features that are attached to the structure may not extend into the required setbacks. Eves may overhang into the required setback by no more than three feet.

TOWN OF ELLICOTTVILLE

FIGURE 8
PAN HANDLE LOTS




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# ARTICLE 4
# MASTER PLANNED DEVELOPMENTS

## Section 4.1 Purpose

The purpose of the Master Planned Development (MPD) provisions of these regulations is to promote development that is consistent with the character of the neighborhood in which it is located; that does not adversely affect natural resources such as wetlands, aquifers, and scenic ridgelines; that avoids development on features such as floodplains and steep slopes, which could adversely affect the parcel on which the development is located and also adjacent parcels and residents of the Town; that achieves economy in the provision and maintenance of public facilities, such as roads, water supply and sewerage disposal; and that preserves the natural and scenic features of the site and encourages the retention of open space.

To accomplish these goals, the Master Planned Development concept allows flexibility in the design of developments and, where appropriate, allows the integration of one or more permitted or special permitted land uses into the development. These Master Planned Development provisions of this Law provide for a flexibility of development similar to that which would be provided in planned unit development regulations.

## Section 4.2 Applicability and Scope

**A.** A Master Planned Development may be located in any zoning district so designated in Section 3.8, Land Use Tables.

**B.** Upon a finding that the Master Planned Development complies with all the standards of Section 4.4 of these regulations, the Planning Board may approve an MPD in which the structures may be joined by party walls or be separated by reduced yards. Development may be located in one or more portions of the site, in order that other parts of the site remain undeveloped or are developed for usable open space. When open space is provided elsewhere on the site, the intensity of development within the developed areas may exceed that which would be allowed in a standard development; however, the overall density of the development shall not exceed that which would be allowed if the site were developed under the conventional requirements of this Law.

**C.** If a site is located in more than one zoning district, the overall allowable density shall be calculated using the provisions that apply to the separate zoning districts. Development within that allowable density may be located anywhere on the site, irrespective of the zoning district boundaries, provided that the proposed project complies with the criteria in Section 4.4, and provided that the overall allowable density is not exceeded, and provided that the adjacent neighborhood would not be adversely affected.

**D. Cluster Subdivisions:** The Town Board hereby authorizes the Planning Board to consider

applications for Cluster Subdivisions pursuant to the Town Law Section 278, in conjunction with an application to the Planning Board for subdivision approval. In reviewing applications for cluster subdivisions the Planning Board may allow a reduction in the minimum lot size, lot width and a commensurate reduction in building setbacks for residential, detached single family dwelling subdivisions, provided however, that the overall number of building lots and/or dwelling units does not exceed that which would be allowed under a conventional subdivision development pursuant to the dimensional regulations of this Law. The land not used for residential development shall be maintained as permanent open space. Applications for a Cluster Subdivision shall include an application for subdivision approval and an application for Master Planned Development approval.

## Section 4.3 Application Process

An application for Master Planned Development shall be submitted on a form provided by the Town. If the applicant is not the property owner, the application shall include the written consent by the owners of all property to be included in the Master Planned Development.

Review of an application for Master Planned Development shall generally consist of three phases: an optional pre-application conference, Conceptual Master Planned Development approval, and Final Master Planned Development approval. For projects which also require Subdivision approval from the Town of Ellicottville, the Conceptual Master Planned Development application shall be considered simultaneously with the application for Preliminary Plat approval and the application for Final Master Planned Development approval shall be considered simultaneously with the application for Final Plat approval.

### A. Pre-Application Conference

The purposes of the pre-application conferences are:
(1) to allow the Planning Board to become acquainted with the proposed project;
(2) to allow the applicant to become acquainted with the Master Planned Development procedures and Town requirements; and
(3) to allow the Planning Board to provide the applicant with a preliminary list of concerns and issues that should be addressed in the application.

In order to facilitate a reasonable discussion of the proposal, the applicant shall provide:
(1) a location map
(2) a generalized map showing contours, natural features, and existing development on the site, and
(3) a conceptual site plan showing the proposed project.
(4) a conceptual rendering of the proposed principal buildings

### B. Conceptual Master Planned Development Application

(1) An applicant for conceptual Master Planned Development approval shall submit the following information and materials. Required engineering data shall be prepared by a

professional engineer licensed in the State of New York:

a. Location map; and

b. Map of the existing site, showing the following information:
   (i) Vicinity map, showing the property lines of adjacent properties and the location of buildings and driveways on those adjacent properties
   (ii) Scale and north arrow
   (iii) Site boundaries and dimensions; any existing easements
   (iv) Existing topography at an appropriate interval.
   (v) Location and type of major clusters of mature trees and other existing significant vegetation
   (vi) Soil types and engineering properties
   (vii) 100 year flood plain, including floodway and floodway fringe; wetlands
   (viii) Existing structures and their current uses
   (ix) Existing roads and other improvements
   (x) Location of existing public utilities and utility easement**s**; and

c. Site plan

   The site plan shall show the major details of the proposed Master Planned Development, prepared at an appropriate scale. The Site Plan shall contain sufficient detail to evaluate the land planning, building design, and other features of the proposed Master Planned Development. The Site Plan shall contain, insofar as applicable, the following minimum information:
   (i) Scale and north arrow
   (ii) Proposed name of the development
   (iii) The location and size of all existing and proposed buildings, structures, and improvements; and any land set aside for future development
   (iv) Location and dimensions of all proposed easements
   (v) Location and general dimensions of all proposed impervious paved areas such as roads, streets, walkways, parking lots, tennis courts, plaza, etc.
   (vi) Proposed open spaces with an indication as to use and ultimate ownership; and

d. Grading Plan with existing and proposed contours at an appropriate interval; and

e. Stormwater Management Plan. A SWPPP will satisfy this requirement; and

f. Snow Storage Plan; and

g. Preliminary plan showing proposed water supply and sewerage disposal systems; and

h. Diagram showing vehicular and pedestrian traffic circulation, with points of access to off-site roads, sidewalks and trails, as appropriate. The diagram should show how emergency vehicle access will be provided. Anticipated average daily traffic (ADT) volumes shall be provided; and

i. Conceptual Landscaping Plan, showing general areas to be landscaped and a general concept as to type and numbers of species; and

j. Preliminary building elevations, showing the height and dimensions of the buildings, along with a conceptual design of the materials and colors of the buildings. The Planning Board may require renderings showing the proposed project in relationship to adjacent properties; and

k. Floor plans, if necessary to compute density of the proposed project; and

l. Environmental Assessment Form; and

m. Application fees; and

n. Written Statement: The written statement to be submitted with the Master Planned Development application shall contain the following information:

(i) A statement of the present and future ownership and a legal description of the land included in the Master Planned Development application, including identification of all easements, covenants or restrictions on land use, which may affect the site.

(ii) A general description of the project containing information that is not readily available in map form, such as hours of operation, etc.

o. Other data

Other data as may be required by the Planning Board for a complete understanding of the proposed project. The Planning Board may waive the requirement for any of the above listed material, upon a finding that such information is not necessary for a complete understanding of the proposed project.

(2) **Planning Board review of Conceptual Master Planned Development Application**

a. In reviewing the application, the Planning Board shall evaluate the proposal using the standards contained in Section 4.4 of this Law and all other applicable requirements of this Law.

b. After the Planning Board determines that the application is complete, the Board shall hold a public hearing on the application, in accordance with the requirements for a special use permit contained in Section 6.5 of this Law.

c. The Planning Board shall make a decision on the application within 62 days of the close of the public hearing. This deadline may be extended by mutual consent of the applicant and the Planning Board.

d. Before making a determination on the application, the Planning Board shall complete SEQR review pursuant to the requirements of NYS Part 617.

**C. Final Master Planned Development Application**

(1) Within 6 months of the approval of the Conceptual Master Planned Development, the applicant shall submit an application for Final Master Planned Development approval**,** or the conceptual Master Planned Development approval will expire. This time period may be extended by the Planning Board upon request by the applicant, prior to the deadline for the expiration of approval. The applicant's request for extension should contain the reasons why the applicant cannot meet the six month time frame for application.

(2) An applicant for Final Master Planned Development approval shall submit the following information and materials. Required engineering data shall be prepared by a professional engineer licensed in the State of New York. If applicable, a survey prepared by a land surveyor, licensed to practice in the State of New York, may also be required**.**

a. Final Site Plan

b. Final Grading Plan

c. Final Stormwater Management Plan

d. Final Water Supply and Sanitary Sewerage Plans: The site plan shall show all components of these systems, including proposed easements and any above ground facilities. The application for Final Master Planned Development approval shall be accompanied by approvals from other regulatory agencies, such as Cattaraugus County Health Department and NYS Department of Environmental Conservation.

e. Utility plan: The site plan shall include the proposed location of other utilities, such as gas, electric and cable television lines, including any above and/or below ground facilities such as transformers.

f. Final traffic flow plan and emergency vehicular access plan

g. Detailed Landscaping Plan, showing a planting schedule with species and numbers of plants, paving and other types of landscaping

h. Final Snow Storage Plan

i. Lighting Plan

j. Signage Plan

k. Final building elevations with details regarding size, height, materials and colors of all

proposed buildings, including floor plans.

l. Draft Homeowner's Association Offering Plan and By-laws; copies of any other agreements, conveyances, restrictions or covenants that will govern the use and maintenance of the site.

m. Construction schedule, indicating the approximate dates when construction of the Master Planned Development will begin and end. If project construction will last for more than one year, a Phasing Plan shall be submitted.

n. Any other data requested by the Planning Board, which is necessary for an adequate understanding of the proposed project.

o. Application fees

(3) **Planning Board review of application for Final Master Planned Development**

a. The Planning Board shall review the application for Final Master Planned Development. If the Planning Board determines that the application is in substantial conformance with the approved conceptual Master Planned Development, no additional public hearings or additional SEQR review shall be required.

b. If the Planning Board determines that the application is complete and is in substantial conformance with the approved conceptual Master Planned Development, the Board shall make a determination on the Final Master Planned Development application within 62 days of the date that the Planning Board determines that the application is complete. In making its determination, the Planning Board shall consider the standards of Section 4.4 and all other applicable requirements of this Law.

c. If the Planning Board determines that the application for Final Master Planned Development is substantially different from the approved conceptual Master Planned Development, the Board shall follow the procedure for review contained in the section for Conceptual Master Planned Developments and shall conduct additional SEQR review and hold additional public hearing(s).

(4) **Waiver of Conceptual Master Planned Development Application**

When a preliminary plat application is not required, the Planning Board may, at its discretion, waive the requirement for an application for conceptual master planned development approval. If this requirement is waived, the applicant may apply directly for Final Master Planned Development, but the submittal must contain all the materials required in both Section 4.3B **and** Section 4.3C of this Article. The Planning Board is required to hold at least one public hearing on the proposal and to conduct an environmental review pursuant to NYSEQRA law, prior to making a decision on the application.

## Section 4.4 Standards

A Master Planned Development shall comply with the following standards and requirements.

### A. Uses Permitted

The uses in a Master Planned Development shall be limited to the uses that are shown on the land use table in Article 3 as allowable in the type of Master Planned Development that is proposed.

### B. Density

The maximum density or intensity of development that is allowable in a Master Planned Development shall be determined as described below. See also Section 4.2 and Article 3 of this Law.

(1) **Detached Single Family Dwelling Units**

For all Master Planned Developments that contain detached, single family residences, the requirements of Article 3 regarding maximum densities shall apply. However, as stated in Section 4.2, the Planning Board may adjust the minimum lot sizes, lot widths and setbacks of individual lots to be less than the minimum requirements of Article 3, provided that the overall density of the development shall not exceed that which would be allowed if the site were developed under the conventional requirements of this Law.

(2) **Townhouses and Other Attached Single Family Homes**

a. Purpose and Intent: The provisions of this Article are intended to provide flexibility in development, to promote development that has a reasonable footprint on the ground in relationship to the size of the proposed units, and to preserve open space and significant natural features on the site.

b. Townhouse density shall be calculated based on the Gross Residential Floor Area (GRFA) of the proposed project in relationship to the Net Developable Site Area. This provides flexibility of site design, based on unit size and footprint. Maximum allowable site density shall be the lesser of the maximum number of units calculated using the GRFA method or eight (8) units per acre. However, the maximum allowable density effectively may be reduced from that maximum by the need to provide adequate on-site parking and to comply with the minimum usable open space requirement.

c. **Maximum density using the GRFA Method**

**Net Developable Site Area** is the total area of the site adjusted for topography and other site features. Net Developable Site Area shall be calculated using the following formula:

**Net Developable Site Area** = the sum of (Area of site in each Site Feature category) multiplied by (capacity rating for that category)

Capacity Rating for each Site Feature category is contained in the following table:

**Table 4-1: Capacity Rating**

| Site Feature category | Capacity Rating |
|---|---|
| Site area in slopes less than 10% | 1.00 |
| Site area in slopes 10 - 15% | 0.50 |
| Site area in slopes 15.01 – 20% | 0.20 |
| Site area in slopes 20.01 - 25% | 0.10 |
| Site area in slopes greater than 25% | 0.05 |
| Wetlands | 0.50 |
| 100 year Floodplain | 0.50 |

**Gross Residential Floor Area (GRFA),** as defined in Article 2 of this Law, is the sum of the floor area of all stories in a residential structure, measured from the exterior faces of exterior walls, or in the case of a common wall separating two buildings, from the centerline of such common wall.

For purposes of calculating allowable density, basements shall be included in Gross Residential Floor Area if these features meet the definition for "story above grade" or if there is a walk-out basement, regardless of whether or not the basement meets the definition for story above grade.

Attic spaces that meet the definition for "half-story" shall be included in GRFA, regardless of whether or not the space is finished. Loft spaces shall be included in GRFA. Floor area shall be calculated based on actual proposed floor area for each feature.

Unenclosed porches, decks or patios shall not be included in Gross Residential Floor Area.

Garages that are used to meet the parking requirements of Article 5 of this Law shall not be included in GRFA.

**Maximum allowable number of units (density)** is determined by the ratio of GRFA to the Net Developable Site Area. The following ratios shall apply:

**Table 4-2: Ratios**

| Building Height | Ratio |
|---|---|
| One story structures: | 0.35 |
| Two story structures: | 0.50 |
| 2 ½ story structures: | 0.50 |

The maximum allowable gross residential floor area for the site is determined by the following formulas:

**Maximum allowable GRFA** = (Net Developable Site Area) multiplied by (applicable ratio from Table 4-2)

**Maximum number of units** = (Maximum allowable GRFA) divided by (average gross floor area per unit)

**d. If the maximum number of units calculated using the GRFA method exceeds eight (8) units per acre, site density will be capped at 8 units per acre, maximum. However, the allowable number of units may be reduced from this maximum by the usable open space and parking requirements. See Section 4.4 B(2)(b).**

(3) **Hotels, Apartment Buildings, and Other Commercial Development**

The allowable density for multiple family residences that are contained in one building, such as an apartment building; for hotels and motels; and for other types of commercial development shall be determined based on the usable open space requirements of the zoning district in which the site is located, as stated in Article 3 of this Law, and the other requirements of this Law, such as off-street parking requirements, height limitations, and setback requirements.

(4) **Mixed Use Developments**

If a Master Planned Development contains more than one type of use, the maximum allowable density of development shall be calculated for each type of use independently and then added together. If commercial recreation facilities are proposed as part of a MPD, the land used for outdoor recreational use, such as ski slopes, golf courses, etc., may be counted toward the usable open space requirement.

## C. Off-Street Parking

(1) The number of off-street parking spaces in each Master Planned Development shall not be less than the requirements stated in Article 5 of this Law, except that the Planning Board may increase or decrease the required number of off-street parking spaces in consideration of the following factors:

a. Probable number of cars anticipated to be used by occupants of dwellings in the Master Planned Development.

b. Parking needs of any non-dwelling uses, including the traffic attracted to commercial uses from off-site.

c. Varying time period of use, whenever joint use of common parking areas is proposed.

d. Whenever the number of off-street parking spaces is reduced because of the nature of the occupancy, the Planning Board shall obtain assurance that the nature of the occupancy will not change. No parking reductions shall be granted for developments requiring eight or fewer parking spaces.

(2) Parking areas shall be designed so that parking is convenient to the facilities that it serves, is safe for users, and is screened, where appropriate from adjacent facilities. Parking lots shall conform to the requirements of Article 5 of this Law.

**D. Setbacks**

(1) The front, rear, and side yard setback requirements of Article 3 shall apply to Master Planned Developments, except that the Planning Board may reduce interior setbacks in order to promote flexible and creative site design and to accomplish the purposes of this Article. To this end, the Planning Board may approve Master Planned Developments with flexible lot layouts, including but not limited to, townhouse developments with party walls, zero lot line developments, and cluster subdivisions.

(2) Along the boundaries of the site, the minimum setbacks, as stated in Article 3, shall be observed. However, in the LD and MD Zoning Districts, as part of a Master Planned Development, the Planning Board may allow a single family home and attached and/or detached garage to come to within 15 feet of the front property line, where the Planning Board finds that such lesser setback is appropriate or reasonably necessary to solve access problems to lots with relatively steep grades or to eliminate or minimize cut and fill areas.

**E. Site Planning**

The Planning Board must be satisfied that the site plan for the Master Planned Development has complied with each of the following criteria or that one or more of them is not applicable, and that a practical solution consistent with the public interest has been achieved for each of these elements.

(1) There is an integrated relationship among the proposed buildings, structures, and uses to other areas, structures, and uses within the Master Planned Development.

(2) The Master Planned Development is designed to contribute to the quality, livability, and aesthetics of the residents of the Master Planned Development and to those outside of the site. The Master Planned Development shall be designed to be compatible with

surrounding land uses.

(3) The site is adequate to support the density of the proposed project**.**

(4) Open Space

a. All Master Planned Developments shall provide at least the minimum usable open space required in Article 3 for the zoning district in which the site is located.

b. Areas designated as usable open space shall be suitable for scenic, landscaping, buffering or recreational purposes and shall be accessible and available to persons for whose use the usable open space area is intended. If the usable open space area is intended to protect a natural resource, such as a wetland or steep slope, the area should be designed to be suitable for this purpose.

c. Usable open space areas should be relatively large and contiguous in area and should not be located in scattered, fragmented locations throughout the site. Foundation plantings and planting strips between driveways are encouraged; however, a maximum of five percent of the usable open space requirement may be satisfied through these features, regardless of the total site area devoted to such strip landscaping.

d. Usable open space areas shall be preserved and maintained as permanent usable open space through an irrevocable dedication declaration, restrictive covenants, notations on a plat map and/or other mechanisms acceptable to the Planning Board. The approval of a Final Master Planned Development shall require that such Agreements shall be recorded in the office of the Clerk of Cattaraugus County and that no building permit shall be issued for any part of the Master Planned Development until a copy of the recorded document has been provided to the Town. The recorded Agreements, the Homeowner's Offering Plan and Declaration, or some other legal document shall specify the entity that is responsible for maintaining, repairing and preserving the open space areas.

(5) Circulation

a. The applicant shall demonstrate that the proposed Master Plan Development shall not significantly adversely affect traffic circulation on adjoining roads**.**

b. The design of the Master Planned Development shall include a circulation system that integrates vehicular, bicycle, and pedestrian routes within the development and which links the site to areas outside of the site, as appropriate. The internal street circulation system shall be designed for the volume and type of traffic generated; for the safety and convenience to residents and visitors; and for reasonable access to the existing road system. Internal roads must meet the Town standards for either public or private roads, depending upon ultimate ownership. All roads, whether public or private, shall be designed to accommodate police, ambulance and fire department vehicles for

emergency purposes.

c. The Master Planned Development shall include an internal pedestrian circulation system, which provides safe and convenient access among areas within the site, including between the parking areas and residences and other facilities. Sidewalks, separated from the vehicle travel lanes, shall be provided along all internal roadways. The Planning Board may require additional internal pedestrian access; for example, on sites where pedestrian access provides a more convenient route across a site than using sidewalks along roads. Unless the Planning Board specifically determines otherwise, all sidewalks and pedestrian paths shall be hard surfaced and shall be usable year round (i.e. the sidewalks and paths shall be maintained free of snow in the winter).

d. Where feasible, separate bicycle lanes or paths shall be provided.

e. Where appropriate, the pedestrian circulation and bicycle paths shall be connected to existing sidewalks and bicycle paths.

f. To provide for future interconnectivity of the road system, dead-end roads are discouraged. The Planning Board shall require that the rights-of-way of public roads shall be continued to the property lines of adjacent parcels, even if such parcels are vacant or underdeveloped, in order to provide for future extension of the road. If the roads are private roads, the Planning Board may require that rights-of-way be extended to the property lines in order to provide for emergency vehicular access, even if the roads would not otherwise be connected.

g. Where applicable, the site plan shall address the control of delivery and service vehicles and loading and unloading zones.

(6) Water supply and sewerage disposal services shall be adequate to serve the ultimate proposed build-out of the Master Planned Development, including capacity in the municipal or private system that serves the site. However, a phased project is not required to install all the utilities in the first phase of development. Water and sewer lines shall be placed so that they can be easily extended to serve other parcels, if appropriate. The Planning Board may require that easements for water supply and sewerage disposal systems shall be extended to the property lines, in order to provide for future extension to adjacent parcels.

(7) The location of other utilities, such as cable television, electricity and gas, shall be shown on the Final Master Planned Development Plans. These utilities shall be coordinated as to location on the site. Above ground facilities, such as large transformers, shall not be located in the required setbacks, unless otherwise approved by the Planning Board. In the event that utility companies will not provide locations of their facilities prior to final approval of the Master Planned Development, Final Master Planned Development approval shall be conditioned upon the presentation of a Utility Plan for the review and approval by the Town Engineer, prior to the issuance of any building permits.

(8) The Stormwater Management Plan is adequate to serve the proposed Master Planned Development**.**

(9) The design of the Master Planned Development shall ensure that the privacy of adjacent land owners is not materially affected by the proposal. The design of the Master Planned Development shall also address the privacy needs of future residents of the site.

**F. Building, Lighting and Signage Requirements**

(1) Buildings may be attached, semi-detached, or freestanding. The separation between detached buildings shall be a minimum of twenty feet.

(2) The uses within buildings may be mixed**,** provided that all land uses are permitted for the type of Master Planned Development that is proposed, as shown on the Land Use Table in Article 3 of this Law.

(3) The design of buildings, signage and lighting shall be consistent and complementary throughout the Master Planned Development in terms of mass, bulk, orientation, design, materials, colors and texture. However, variety of building types, size and orientation for large scale projects is encouraged to avoid a monotonous appearance.

(4) All attached structures and large structures shall comply with the requirements of Section 3.9E, Maximum Building Length.

(5) Lighting shall not project onto adjacent properties at such an intensity level as to cause a substantial increase in off-site levels of lighting. Lighting shall be designed to provide the minimum level of lighting necessary for safety and convenience. Lighting shall be designed to direct light down onto the site, not up in the sky.

(6) Signage shall comply with the requirements of Section 12.1 of this Law. The design and materials of site signage shall be consistent throughout the Master Planned Development.

**G. Landscaping**

(1) Landscaping shall comply with the standards contained in Section 12.6 of this Law. All open areas of the site shall be landscaped, except for areas that are intended to remain in their natural state, as approved by the Planning Board. Landscaping shall be designed to address the purpose of the planting, such as site beautification, screening, buffering or other purpose. Future maintenance, water needs, suitability of the plant for the site and effect on the neighborhood should be considered in the landscape design.

(2) The landscaping plan shall provide for the screening of garbage dumpsters and other storage areas, if any.

(3) Loading and unloading zones and docks shall be screened from view from existing public

roads and shall be screened from view from internal roads and features to the maximum extent practical.

**H. Support Commercial Facilities**

Within any Master Planned Development which permits support commercial facilities, such support commercial facilities shall be clearly accessory to the primary use of the site. All support commercial facilities shall be oriented to the internal pedestrian circulation system of the Master Planned Development. Signage on support commercial facilities shall be visible only from within the development, and shall not be oriented to the adjacent public roads or off-site circulation areas.

**I. Phasing Plan**

The Phasing Plan shall indicate what areas of the site will be located in which phases, information on how water supply and sanitary sewerage will be provided, phasing of the stormwater management system, temporary road turnaround locations, and a temporary landscaping and/or maintenance plan for those portions of the site that will not be immediately developed. The Phasing Plan shall include the anticipated start date (in months) and completion date for each phase of the development.

## Section 4.5 Planning Board Determination

**A.** In making a determination on an application for a Conceptual Master Planned Development or for a Final Master Planned Development, the Planning Board shall evaluate the proposal using the standards contained in Section 4.4 of this Law, as well as all other applicable regulations of this Law. The Planning Board may approve the Master Planned Development, deny the Master Planned Development, or approve the Master Planned Development with conditions.

**B. Findings:** Prior to approval or approval with conditions of the Master Planned Development, the Planning Board shall make all of the following findings:

(1) The proposed Master Planned Development is consistent with the Town of Ellicottville Comprehensive Plan.

(2) The proposed Master Planned Development will not unreasonably interfere with the orderly land use and development plans of the Town of Ellicottville.

(3) Adequate water supply and sewerage disposal capacity exists or is being provided to serve the proposed Master Planned Development.

(4) The proposed Master Planned Development will not be detrimental to the public health, safety or welfare of the community.

(5) The proposed Master Planned Development complies with all required provisions of this Law**,** including the standards in Section 4.4, or will comply with those requirements

based on conditions that may be attached to any approval, unless variances have been properly granted by the Town of Ellicottville Zoning Board of Appeals.

**C. Length of Approval**

(1) Construction of a Final Master Planned Development shall commence within two years of the date of approval, or the approval will expire.

(2) Once construction has begun, the approval of a Master Planned Development shall remain in effect as long as construction is proceeding in accordance with the approved Phasing Plan.

(3) Approval will lapse after two years of inaction, unless extended by the Planning Board for a specified period, upon written request by the project sponsor prior to the expiration of the approval.

(4) If construction stops temporarily for more than 60 days, the site must be stabilized. This will consist of grading and reseeding of the property. Undeveloped portions of the property shall be mowed a minimum of four times per year. The applicant can request a waiver of this stabilization provision from the Planning Board.

**D. Amendment**

(1) If any modification to an approved Final Master Planned Development is proposed, the applicant shall apply to the Planning Board for an amendment to the approved project. An application for an amendment shall include a letter discussing the proposed change and the necessity for that change, in addition to plans showing the proposed change(s). The Planning Board shall determine if the proposed amendment is substantial or *de minimus*.

(2) *De minimus* changes shall include the following and similar insignificant changes:

a. minor changes to the Landscaping Plan, such as a change in the types of plantings, provided the amount of buffering or landscaping is essentially the same as the approved plan; and/or
b. reconfiguration of the parking lot, where the number of parking spaces does not fall below the minimum requirement; and/or
c. change in location of garbage dumpsters, light poles, or similar site features, where the overall level of service will not change; and/or
d. change in location of access driveway, provided that such driveway meets all the criteria in Article 5 of this Law; and/or
e. minor realignments of water lines, sanitary sewer lines, and storm drainage facilities that may be necessary during construction, as approved by the Town Engineer.

(3) Any other change, including an increase in density, new buildings or the expansion of existing buildings, shall be considered a substantial amendment.

(4) The Board may approve *de minimus* changes administratively, without a public hearing, referral to the Cattaraugus County Planning Board or additional SEQRA review.

(5) If substantial, the Board shall hold a public hearing, following the procedure in Section 4.3B(2) of this Law, and shall make a determination as to whether or not the SEQR determination of significance should be re-examined, prior to making a decision on the requested amendment.

# ARTICLE 5
# PRIVATE ROADS AND OFF-STREET PARKING

## Section 5.1 Applicability

Except as may be provided elsewhere in this Code, 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, as required by this Article, shall be provided. If any land, structure, or use is changed from one use to another use which requires more off-street parking spaces and/or loading spaces, such additional parking and loading spaces shall be provided.

## Section 5.2 Private Roads

All private roads shall be built to the standards contained in the *Regulations for Dedication of Local Roads in the Town of Ellicottville,* as may be amended from time to time. All private roads shall be accessible by emergency vehicles in terms of road geometry and grade. Roads that are not built to the specifications of Town Roads shall have a notation on the plat map, or other formal notification in instances where there is no plat map, stating that such roads are not built to Town road standards and therefore will never be dedicated to the Town. As part of the review of Master Plan Developments, Special Use Permits and/or other discretionary reviews authorized in this Code, the Town Engineer shall approve the design of all private roads.

The Town's *Regulations for Dedication of Local Roads in the Town of Ellicottville* provide some flexibility of road design for private roads, based on level of anticipated usage contained in the AASHTO standards for private roads. In some instances travel lanes as wide as 10 feet (total road width of 20 feet) may be appropriate, in order to reduce the amount of impervious surfaces and to provide a more rural appearance to a development. Therefore, as long as the road design can be demonstrated to be accessible for emergency vehicles, the Planning Board may approve designs that have narrower lane widths than that which would be required for public roads, if it can be shown that the overall design and functionality of the proposed project would benefit.

## Section 5.3 Parking Lot Standards

All parking lots shall be designed and constructed in compliance with the following standards:

### A. Surfacing

(1) Parking lots shall be designed to have a base that is adequate for the anticipated loading and soil conditions, as certified by the Project Engineer. Parking lots shall be hard surfaced, at a minimum to be a double oil and chip surface. The Planning Board may waive the requirement for hard surfacing of the lot, upon the recommendation of the Town Engineer, when unusual circumstances so warrant. Such circumstances include

an anticipated low volume of users and/or the necessity for less pervious surfaces to provide a reduction in runoff; however, such waiver of the pavement requirement shall not affect the usability of the parking lot.

(2) The property owner shall maintain the parking lot in good condition; the parking lot shall be kept in an unobstructed and usable condition at all times.

(3) Parking lots shall be designed to provide adequate, unobstructed access to a public or private road.

**B. Grading**

(1) Parking lots shall be graded for proper drainage, with surface water diverted in such a way as to keep the parking area free of accumulated water or ice. Adequate curbs shall be installed to control drainage and direct vehicle movement. Parking lot drainage shall be controlled on site and channeled to storm drain or gutter as approved by the Town. All drainage shall be controlled by a stormwater management plan approved by the Town Engineer.

(2) Driveway access grades shall not exceed 10% in slope, and shall provide a minimum 20 foot staging or transition area at no greater than 2% slope beginning at the back of the curb where existing, or as otherwise approved by the Town Engineer in anticipation of future road improvements.

**C. Lighting**

Parking lots shall be illuminated to the minimum necessary to provide for the safety of users of such lots. All lighting shall be designed, shielded and installed such that virtually all light falls onto the lot and does not spill over onto adjacent properties. Downshielded lights are preferred. Shorter light poles, which may necessitate more lights, are preferred to very tall light poles. Lighting shall comply with the standards of Section 12.2, Outdoor Lighting Standards, of this Law.

**D. Parking in Structures**

In addition to the other applicable requirements of this Article, parking within a fully enclosed parking structure, where the weather does not affect the availability of spaces, shall conform to the following requirements:

(1) All parking spaces shall be a minimum of 9 feet wide by 18 feet long. However, the Planning Board may, at its discretion, allow a small number of parking spaces to be reserved for compact car parking; such compact spaces may be reduced in size proportionally.

(2) All parking structures shall be reviewed for provision of adequate circulation and to ensure that each required space is readily accessible and usable. Column and wall

locations shall be specifically addressed in terms of maneuvering and where automobile doors will swing open.

**E. Outside Parking Lots**

In addition to the other applicable requirements of this Article, parking in an outdoor surface lot shall conform to the following requirements:

(1) All parking spaces shall be a minimum of 9.5 feet wide by 18 feet long. However, the Planning Board may, at its discretion, allow a small number of parking spaces to be reserved for compact car parking; such compact spaces may be reduced in size proportionally.

(2) **Snow Storage:** Where parking availability will be affected by weather conditions and snow removal, the parking lot and site shall be designed to provide for adequate snow storage. At a minimum, the site plan shall include the following snow storage features:

a. Adequate, non-hard surfaced and landscaped snow storage areas shall be provided adjacent to each surface lot in a usable, readily accessible location.

b. Snow storage areas shall be on-site and the equivalent of 10% of the total hard surfaced area, including parking spaces, aisles, driveways, curbing, gutters, and sidewalks.

c. Landscaping shall be designed so as to accommodate snow removal and storage on-site. Shrubbery and other plantings that may be affected by piles of snow shall not be located in the snow storage areas.

**F. Aisle Width**

Drive aisles in parking lots, whether in structures or outdoors, shall be a minimum of 24 feet wide. Parking spaces shall be oriented at 90 degrees from the drive aisles. The Planning Board, at its discretion, may approve angled parking. If angled parking is approved, then the required 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 lot and that safety is not compromised by the reduction in aisle width. Angled parking shall be approved only for one-way drive aisles.

**G. Design of Parking Areas for Use by More than Four Vehicles**

(1) The design of parking lots for more than four vehicles shall conform to all applicable requirements of this Article. Parking lots shall be designed to provide adequate ingress and egress to a street or road.

(2) All parking spaces in parking lots shall be independently accessible from a drive aisle. The lot shall be designed so that vehicles do not have to maneuver over sidewalks,

adjacent streets or roads, or other parking spaces in order to access a parking space.

(3) Wherever a parking lot or driveway to a parking lot abuts a residential use, a substantial light-tight fence constructed of natural materials not less than four or more than six feet high shall be constructed and maintained in a location that provides an adequate visual buffer to the adjacent property. An earth berm, of the same height, may be substituted for the fence where adequate area exists.

(4) Lots designed for ten or more vehicles shall be striped.

## Section 5.4 Tandem Parking

**A.** Tandem parking is permitted for detached single family dwellings and duplexes.

**B.** For attached single family homes (such as townhouses or condominiums), one tandem parking space per unit may be permitted in a driveway in front of a garage, provided that the following criteria are met:
(1) The Home Owners Association Offering Plan or similar document shall require that the garage shall be available for parking (not used for storage or converted to some other use) in order for the space in the garage to be counted toward the total amount of required parking.
(2) Adequate storage area, as determined by the Planning Board, is available in the dwelling unit to ensure that the garage does not become used for storage.
(3) The site design conforms to the 24 foot driveway length described below.

**C.** Wherever tandem parking is permitted there shall be a minimum distance of 24 feet in the driveway between the garage wall (or edge of parking area furthest from the right of way line if there is no garage) and the sidewalk, curb, or right of way line, whichever is closer to the building wall, in order to provide adequate parking space for the vehicle without encroaching onto the sidewalk or right-of-way.

**D.** Tandem parking may not include more than two cars in depth, and shall not require occupants of separate dwellings to park behind one another.

## Section 5. 5 Off-Street Parking Requirements

### A. General Standards

Required parking must be provided on the same lot as the use that it serves or on an adjacent lot under the same ownership and control. Where a project proposes more than one type of land use, the parking requirement shall be totaled for all components of the project. The standards listed in this section are the minimum required; the Planning Board may require additional parking after site specific review, based on the anticipated usage of a particular project.

**B. Minimum Off-street parking requirements for non-residential land uses**

| | |
|---|---|
| Golf course, tennis court, ski areas and similar commercial recreation facilities | As determined by the Planning Board, after a recommendation by the Town Engineer, who shall base the recommendation on the hourly capacity and the location of the facility with respect to transportation services (including private shuttle services) and pedestrian access. |
| General Retail Establishment<br>Service Retail Establishment | 3 spaces per 1000 square feet of gross floor area |
| Bulk Merchandise Retail Establishment | One space per 1000 square feet of gross floor area |
| Shopping centers or complexes of multi-tenant retail spaces | 3 spaces per 1,000 square feet of gross floor area |
| Offices<br>Personal service establishment | One space for each 500 square feet of gross floor area |
| Medical and dental clinics | Five spaces per 1000 square feet of gross floor area |
| Restaurants and bars | One space for every four seats plus staff parking |
| Churches, Auditoriums, Assembly halls | One space for every five seats |
| Ancillary conference and meeting rooms, banquet facilities, and restaurant facilities that are accessory uses to hotels, motels and inns and that are primarily intended to serve those who are guests at the transient lodging facility | One space per 2000 square feet of gross floor area, subject to specific review by the Town Engineer, who may recommend a reduction/increase based on site specific mitigating factors |
| Stand-alone Conference Facility and/or Banquet hall | One space per 200 square feet of gross floor area. |
| Industrial establishments | One space for every two employees in the largest shift plus one space for each vehicle used in conducting the business. |

| | |
|---|---|
| Wholesale establishments | One space per 1000 square feet of gross floor area |
| Hospitals, schools, civic buildings | As determined by Planning Board, after a recommendation by the Town Engineer, which shall be based on site specific review of anticipated numbers of employees, patrons, and/or visitors that can be reasonably anticipated |
| Home Occupations | As determined by Planning Board, after a recommendation by the Town Engineer, which shall be based on the anticipated level of use for the specific occupation that is proposed, plus two spaces for the residential use of the property |
| Other uses not listed | As determined by the Planning Board, after a recommendation by the Town Engineer |

**C. Minimum off-street parking requirements for residential and quasi residential land uses:**

| | |
|---|---|
| Detached Single Family Dwellings; Duplexes | 2 spaces per residential unit |
| Bed & Breakfast establishment | One space per room rented, plus two spaces for the single family dwelling |
| Accessory Apartment | one space for the accessory apartment, plus two spaces for the single family dwelling |
| Hotels, motels and inns | One space per guest room, plus one space for every three employees |

**D. Parking for Multiple Family dwellings and attached single family homes (townhouses and condominiums) shall be provided based on size of the units, as follows**:

| | |
|---|---|
| Studio, not to exceed 1000 sq.ft. | 2 spaces/unit |
| One Bedroom, not to exceed 1000 sq.ft | 2 spaces/unit |
| Two bedroom, not to exceed 1500 sq. ft. | 2.5 spaces/unit |
| Units between 1,500 sq.ft. and 2000 sq.ft. | 3 spaces/unit |
| Units between 2000 sq.ft. and 2500 sq.ft. | 3 spaces/unit |
| Units in excess of 2500 sq.ft. | 3 spaces/unit |

Loft areas shall count as a bedroom for purposes of computing required number of parking spaces. In addition to parking spaces per unit, multiple family dwellings and attached single family home developments shall provide one visitor parking space per every four units.

**E. Waiver of parking requirements**

The Planning Board may reduce the minimum parking requirement, after site specific review, based on the anticipated usage of a particular project, if the applicant demonstrates that the minimum parking standards are not necessary in this particular instance. Particularly where different types of land uses are served by the same parking lots, evidence of shared parking may be used to reduce the total parking requirement. If the required number of parking spaces is reduced, that land area shall be devoted to open space, not to increase the intensity of the development.

**F. Calculation of Spaces**

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.

## Section 5.6 Driveways

**A. Driveway Width**

The main driveway(s) giving access to a site from a public thoroughfare shall maintain the following minimum and maximum widths.

| Use | Minimum Width | Maximum Width |
|---|---|---|
| Detached Single Family Dwelling, Two Family Dwelling, Triplex and Fourplex | 10 feet | 24 feet |
| Attached Single Family Residential, Multi-Family | 18 feet | 24 feet |
| Commercial, including transient lodging | 24 feet | 36 feet |
| Industrial | 24 feet | 36 feet |

**B. Spacing between Driveways**

Spacing is defined as (1) the distance between the closer edges of adjoining driveways or (2) the distance between the closer edge of a driveway and right-of-way line of a nearby road. Driveways shall be spaced according to the following:

| Road System Classification | Minimum Spacing between driveways | Minimum Distance From Intersection |
|---|---|---|
| Local | 15 feet | 25 feet |
| Collector | 50 feet | 75 feet |
| Arterial | 75 feet | 150 feet |

A minimum of 75 feet spacing between major commercial driveways is recommended. Joint use of commercial driveways is strongly recommended. The center line of intersections of the driveways of major traffic generators entering from opposite sides of roadway shall be either perfectly aligned or offset by a minimum of 125 feet.

**C. Driveway Setback from property lines**

All driveways must be set back at least ten feet from the property line of any adjacent parcel**.** However, when a driveway is shared between adjacent parcels, this setback requirement may be waived by the Planning Board as part of Site Plan Review.

## Section 5.7 Off-Street Loading Space

**A.** For every use that involves the receipt or distribution of materials or merchandise by vehicle, there shall be provided and maintained adequate space for standing, loading, or unloading services off the street or road.

**B.** All such loading areas or docks shall be so located that no vehicle loading or unloading merchandise or other material shall be parked in any required front yard, sidewalk or pedestrian access, or in any public or private road**.**

**C.** When any loading dock or area is constructed adjacent to a residential use, or adjacent to an HD, MD or LD zoning district, said loading dock or area shall be screened from the adjoining property, either by landscaping or by fencing. See Section 12.6C(7) Landscaping.

# ARTICLE 6
# SPECIAL USE PERMITS

## Section 6.1 Purpose

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

The special use permit procedure is intended to provide greater flexibility in land uses while at the same time preserving neighborhood characteristics and assuring compatibility between the special permitted uses and uses on adjoining properties and the Town as a whole.

## Section 6.2 Authorization to Grant Special Use Permits

**A.** The Planning Board shall hear and determine all applications for Special Use Permits for uses that are so listed in Article 3 and elsewhere in this Law. After evaluating the application using the standards established in this Article and considering the intent and purpose of this Code, the Planning Board may approve, approve with conditions, or deny the application for Special Use Permit.

**B.** If the application is approved, the Planning Board may impose any reasonable conditions necessary to preserve the character of the neighborhood and/or to mitigate potential impacts to the neighborhood, to the Town as a whole, or to the environment. These conditions may include, but are not limited to, the following:

(1) Limiting the hours of operation
(2) Requiring fencing, screening, and landscaping to protect adjacent or nearby property
(3) Limiting the number, size and location of signs
(4) Controlling the number and location of driveway entrances

**C.** The Planning Board may issue a temporary Special Use permit subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by the Board, provided that any such renewal or extension shall be subject to the same procedure as specified herein for the original issuance of the special use permit involved.

**D.** If conditions are imposed by the Planning Board, those conditions shall be satisfied before the Zoning Official can issue a Certificate of Zoning Compliance.

However, the Planning Board may authorize the Zoning Official to issue the Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. This may be necessary, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved site plan. The amount and form of such performance bond shall be determined by the Town Board, after consultation with the Planning Board, Town Engineer, Counsel to the Town, Zoning Official, and/or other appropriate parties.

**E.** Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an area variance without the necessity of such determination by the Zoning Official. The Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for the Special Use permit.

## Section 6.3 Procedures

### A. Pre-Application Conference

(1) A pre-application conference may be held with the Planning Board prior to the preparation and submission of a formal application for a special use permit. At this time the Board and the applicant shall review the application form, the materials and information needed to complete the application, and preliminary issues that may be involved with the project.

(2) In order for the pre-application conference to be useful, the applicant shall provide a sketch plan(s) showing general existing site conditions and a schematic proposal of the project.

### B. Application Content

An applicant for a Special Use Permit shall submit a completed application, on a form provided by the Town, to the Zoning Official, who shall forward it to the Planning Board. The application shall contain the following information and materials:

(1) An application for a Zoning Permit; and

(2) An application for Site Plan Review, with all required application materials; and

(3) If the proposed project is in or near a floodplain, the applicant shall submit an application in accordance with Local Law 1-1995; and

(4) A written statement, which shall contain the following information:

a. the tax map number of the parcel or parcels on which the project will occur, and the name of the owner of record for those parcels; and
b. a general description of the project, including the nature of the use and anticipated hours of operation; and
c. A list of any encumbrances, covenants or easements on the property; and
d. A development schedule indicating phased development, if any, and the estimated completion date for the project; and

(5) If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted; and

(6) All required fees; and

(7) Environmental Assessment Form, with Part I completed and signed by the applicant; and

(8) Any other information that the Planning Board determines is necessary for meaningful review of the application, based on the nature of the project or the site. The Planning Board may waive any particular submission requirement(s) it determines unnecessary for review of a particular project.

**C. Public Hearing**

(1) The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date the complete application is received. The Planning Board shall determine when the application is complete.

(2) Notice of the public hearing shall be published in the following ways:

(a) by publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing; and

(b) by mailing a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of the perimeter of the site that is the subject of the application. However, if a townhouse or condominium project is one of the properties within the 100 foot radius from the applicant's property or if a Homeowners Association owns one of the properties within said 100 foot radius, notice shall be given to the Management Committee, Board of Directors, the condominium owner's association, or the Homeowners Association rather than to each individual unit owner. Notice may also be mailed to such other persons as the chairperson of the Planning Board may direct. Such notices shall be mailed to the address shown on the current assessment roll, at least ten (10) days prior to the public hearing; and

(c) by mailing a notice to the applicant at least ten (10) days prior to the hearing; and

(d) for all applications that meet the requirements contained in Section 239-m of NYS General Municipal law, by mailing, at least ten (10) days prior to the public hearing and accompanied by a full statement of the application, notice of such hearing to the Cattaraugus County Planning Board; and

(e) for all applications where the site is within 500 feet of any municipal boundary, by sending a notice of public hearing to the clerk of that municipality at least ten (10) days prior to the public hearing.

**D. Decision**

(1) The Planning Board shall decide on the application within sixty-two (62) days after the close of the public hearing. The time within which the Planning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.

(2) The concurring vote of a majority of all members of the Planning Board shall be necessary to grant a special use permit.

**E. Filing of Decision and Notice to Applicant**

(1) The Planning Board shall file a copy of its decision on the application with the Town Clerk within five (5) business days of the decision.

(2) A copy of the decision shall be mailed to the applicant within five business days of the decision.

**F. Expiration of Special Use Permit**

A Special Use Permit shall expire one (1) year from the date of approval if a building permit has not been issued or if use of the property in accordance with the grant of Special Use Permit has not commenced, in cases where a building permit is not needed. The Planning Board may grant an extension of the Special Use Permit for up to one additional year when the applicant is able to demonstrate a legitimate need to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors. The applicant shall apply to the Planning Board for such extension, prior to the expiration of the Special Use Permit. The extension of the Special Use Permit is deemed to be a *de minimus* action that does not require a public hearing. However, the Planning Board may choose to hold a public hearing prior to any such extension.

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

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

**G. Abandoned Application**

If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Planning Board, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.

"No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Code or by the requirements of the State Environmental Quality Review Act.

**H. Revocation of Approval of Special Use Permit**

The Planning Board shall have the authority to revoke a special use permit, after a public hearing, if the current owner or operator fails to comply with any condition(s) of approval of the application. Prior to a public hearing on this issue, the Zoning Official shall pursue abatement of the failure to comply as a violation in accordance with Article 8 of this Code.

**I. Amendments to Special Use Permits**

The grant of Special Use Permit shall provide the applicant/owner with approval to conduct the use as approved. Any extension, enlargement, or change in use, shall require the property owner to apply to the Planning Board for an amendment to the Special Use Permit. However, an amendment to the Special Use Permit shall not be required if (1) such use is a permitted (as-of-right) use in the zoning district in which the lot is located, as shown in the Land Use Table in this Code, or (2) such use is determined by the Planning Board to be substantially the same as the use for which a Special Use permit has already been issued.

The Planning Board shall treat the amendment as a new application and shall follow the review and approval process for Special Use Permits that is contained in this Article.

## Section 6.4 Standards for Review

When making a decision to approve, approve with conditions, or deny a Special Use Permit, the Planning Board shall consider the following standards. In approving a Special Use Permit, the Planning Board shall find that the project conforms to these standards, or can be modified or conditioned to bring it into compliance with the standards. In this latter case, conditions of approval or modifications to the proposal shall be part of the approved Special Use Permit.

**A.** The proposed project is consistent with the Town's Comprehensive Plan and any amendments thereto; and

**B.** The proposed project is in harmony with the general purposes and intent of this Law and complies with all applicable requirements of this Code; and

**C.** The proposed project is compatible with the surrounding neighborhood in terms of use and scale and does not adversely affect the character or orderly development of the surrounding neighborhood or adjacent areas; and

**D.** If located near any parcel being used for an agricultural activity, the proposed use will not unduly adversely affect the pre-existing agricultural use; and

**E.** The proposed project will not be detrimental to the health, safety, or general welfare of persons residing or working in the neighborhood of such proposed use or will not be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the Town. In support of this standard, the applicant shall demonstrate that:

(1) the size and location of the site are adequate for the use proposed; and

(2) essential infrastructure and community services, including, without limitation, streets, roads, police and fire protection, emergency vehicle access, and water supply and sewage disposal systems exist to adequately serve the proposed project or will be provided on-site by the applicant. All on-site water supply and sewerage disposal systems shall be approved, in writing, by the appropriate authority; and

(3) the proposed project will not unduly increase traffic volumes or unduly affect traffic flow or safety in the vicinity of the site, and the capacity of the existing road system is adequate to handle the anticipated traffic from the proposed project; and

(4) the proposed project will not generate noise, odor, dust, air emissions or vibrations that will adversely affect the Town, neighborhood and/or adjacent properties; and

(5) site drainage is adequately provided for, to the satisfaction of the Town Engineer; and

(6) the proposed site plan conforms to all requirements of Article 7 of this Code; and

**F.** The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic feature of major significance; and

**G.** Any proposed open space is usable for the purpose for which it is proposed; adequate legal provision has been made such that these areas will remain as permanent open space; and adequate provisions have been made for the maintenance of the open space areas.

## Section 6.5 Planning Board Findings

Prior to issuing a Special Use Permit, the Planning Board shall make all of the following findings:

**A.** the proposed project is consistent with the Town of Ellicottville Comprehensive Plan; and

**B.** the proposed project will not unreasonably interfere with the orderly land use and development in the Town of Ellicottville; and

**C.** the benefits to the applicant and the public of the proposed project will exceed any burdens to the Town and residents therein; and

**D.** the proposed project will not be detrimental to the public health, safety or welfare of the community; and

**E.** the proposed project complies with all applicable provisions of this Law, including the standards in Section 6.4, or will comply with those provisions based on conditions that will be attached to the approval, unless variances have been properly granted by the Town of Ellicottville Zoning Board of Appeals.

# ARTICLE 7
# SITE PLAN REVIEW

## Section 7.1 Purpose

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

## Section 7.2 Authorization to Review Site Plans

**A.** The power to approve, approve with conditions, or disapprove site plans is hereby vested in the Planning Board of the Town of Ellicottville. When considering a site plan application, the Planning Board shall consider the plan elements contained in Section 7.6: Criteria for Approving Site Plans.

**B.** When approving a site plan, the Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to the proposed site plan. Such conditions may include, but are not limited to, limiting the hours of operation; controlling the number and location of driveways; requiring fencing, screening, and/or landscaping to protect adjacent properties and to enhance the visual character of the development; requiring landscaping on site; limiting the number, size, and location of signs; and conditions affecting any of the other plan elements listed in Section 7.6: Criteria for Approving Site Plans.

**C.** No Certificate of Zoning Compliance shall be issued until all aspects of the approved the site plan have been completed, including any modifications to the site plan and any conditions of approval. However, the Planning Board may authorize the Zoning Official to issue the Certificate of Zoning Compliance if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. This may be necessary, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved site plan. The amount and form of such performance bond shall be determined by the Town Board, after consultation with the Planning Board, Town Engineer, Town Planner, Counsel to the Town, Zoning Official, and/or other appropriate parties.

**D.** Notwithstanding any provision of law to the contrary, where a proposed site plan contains one or more features which do not comply with the zoning regulations, application may be made to the Zoning Board of Appeals for an area variance without the necessity of such

determination by the Zoning Official. The Zoning Board of Appeals shall act on the application for a variance prior to final Planning Board action on the application for Site Plan review.

## Section 7.3 Applicability and Exceptions

All new development, redevelopment and land use activities, any change in use, and any Special Use Permit application shall require site plan review and approval from the Town of Ellicottville Planning Board prior to the issuance of a building permit and zoning permit, except the following:

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

**B.** The sale of agricultural produce and temporary structures related to the sale of agricultural produce.

**C.** Construction of new single-family or two-family dwellings, including ordinary accessory structures and related land use activities. Additions, of any size, to existing one-family and two-family dwellings are also exempt from site plan review.

**D.** Signs, except for signs that are included in projects that would otherwise require site plan review.

**E.** Ordinary repair or maintenance to existing structures or uses.

**F.** Interior structural alterations within any existing building.

**G.** Exterior alterations or additions to existing structures that would not increase the square footage of the existing structure by more than twenty-five (25) percent or additions of less than 5,000 square feet, whichever is the lesser**.**

**H.** Landscaping or grading, unless the landscaping and/or grading is part of a development or building project that is subject to site plan review.

**I.** Logging and timber cutting.

**J.** Home Occupations and Home Retail and Service Trade

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

## Section 7.4 Procedures

### A. Pre-application Conference

(1) A pre-application conference may be held with the Planning Board prior to the preparation and submission of a formal application for a special use permit. At this time the Board and the applicant shall review the application form, the materials and information needed to complete the application, and preliminary issues that may be involved with the project.

(2) In order for the pre-application conference to be useful, the applicant shall provide a sketch plan(s) showing general existing site conditions and a schematic proposal of the project.

### B. Application Content

An applicant for Site Plan Review shall submit a completed application, on a form provided by the Town, to the Zoning Official, who shall forward it to the Planning Board.
The application shall contain the following information and materials:

(1) An application for a Zoning Permit; and

(2) A map, with north arrow and scale, identifying the subject site in relation to adjoining public roads and the neighborhood in which it is located; and

(3) A scaled map (or maps) of the site, with a north arrow. The map(s) shall be at a scale approved by the Zoning Official and shall be adequate to show required site features and proposed structures. The map(s) shall show existing site conditions, prior to demolition of any existing structures and any grading. The map(s) shall show:
   a. The boundaries of the site
   b. Any easements of record or known prescriptive easements
   c. Topography with contours shown at intervals of not more than five feet
   d. Vegetation type and location
   e. Soil type and properties
   f. One hundred year floodplain, high groundwater areas, known springs and seep areas, ponds, wetlands, and streams
   g. All existing roads, fences, and drainage facilities
   h. Location of public utility facilities and easements; and

(4) Proposed Site Plan, on one or more scaled maps, with a north arrow. The map(s) shall be at a scale approved by the Planning Board and shall be adequate to show required site features and proposed structures. The site plan shall show:
   a. Location of all proposed buildings and structures
   b. Location of all proposed site improvements, such as plazas, tennis courts, pools, and similar facilities

c. Driveways, parking areas, new and existing roads and any other circulation features, including access to existing public roads
d. Proposed location of new (or existing) utility services or relocated utility services, including easements, if necessary
e. Proposed drainage facilities
f. Location of sewage disposal and water supply systems. A description and explanation of the systems should be included, if necessary; and

(5) Landscaping Plan, including planting schedule; and

(6) Floor plans and elevations of proposed buildings and structures, showing all architectural features, including colors and materials; for large projects the Planning Board may require renderings showing the proposed project in relationship to adjacent properties; and

(7) Lighting Plan, including the location and design of outdoor lighting; and

(8) Signage Plan, including the location, design, color, materials and size of all signs; and

(9) Stormwater Management Plan (a Stormwater Pollution Prevention Plan prepared in accordance with NYSDEC regulations shall be adequate to meet this requirement); and

(10) Grading plan showing existing and finished contours and grades, the location of any slopes of five (5) percent or greater, and proposed erosion control measures; and

(11) If the proposed project is in or near a floodplain, the applicant shall submit an application in accordance with Local Law 1-1995; and

(12) If necessary, designations of proposed ownership of areas shown on the site plan as being part of a condominium unit, common area or dedicated open space; and

(13) A written statement, which shall contain the following information:
a. The tax map number of the parcel or parcels on which the project will occur, and the name of the owner of record for those parcels.
b. A general description of the project, including the nature of the use and anticipated hours of operation.
c. If a multi-family dwelling is proposed, a description of the proposed ownership: condominium, rental, time-share ownership, etc., and a description of the proposed property management structure.
d. A list of any encumbrances, covenants, easements on the property. These should also be shown on the site plan.
e. A development schedule indicating phased development, if any, and the estimated completion date for the project; and

(14) If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted; and

(15) Environmental Assessment Form, with Part I completed and signed by the applicant; and

(16) All required fees; and

(17) Any other information that the Planning Board determines is necessary for meaningful review of the application, based on the nature of the project or the site. The Planning Board may waive any particular submission requirement(s) it determines unnecessary for review of a particular project.

**C. Public Hearing**

(1) The Planning Board shall hold a public hearing on the application within sixty-two (62) days from the date that a complete application is received. The Planning Board shall determine when the application is complete.

(2) Notice of the public hearing shall be published in the following ways:

(a) by publication in a newspaper of general circulation in the Town at least five days prior to the date of the public hearing; and

(b) by mailing a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of the perimeter of the site that is the subject of the application. However, if a townhouse or condominium project is one of the properties within the 100 foot radius from the applicant's property or if a Homeowners Association owns one of the properties within said 100 foot radius, notice shall be given to the Management Committee, Board of Directors, the condominium owner's association, or the Homeowners Association rather than to each individual unit owner. Notice may also be mailed to such other persons as the chairperson of the Planning Board may direct. Such notices shall be mailed to the address shown on the current assessment roll, at least ten (10) days prior to the public hearing; and

(c) by mailing a notice to the applicant at least ten (10) days prior to the hearing; and

(d) for all applications that meet the requirements contained in Section 239m of NYS General Municipal law, the Planning Board shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least ten (10) days prior to the public hearing and shall be accompanied by a full statement of the application; and

(e) for all applications where the site is within 500 feet of any municipal boundary, a notice of public hearing shall be sent to the clerk of that municipality at least ten (10) days prior to the public hearing.

**D. Decision**

(1) The Planning Board shall make a decision on the application within sixty-two (62) days from the close of the public hearing. The time within which the Planning Board shall reach its decision may be extended by mutual consent of the applicant and the Board.

(2) The concurring vote of a majority of all members of the Planning Board shall be necessary to grant site plan approval.

**E. Filing of Decision and Notice to Applicant**

(1) The Planning Board shall file a copy of its decision on the application with the Town Clerk within five (5) business days after such decision is rendered.

(2) A copy of the decision shall be mailed to the applicant within five business days after such decision is rendered.

**F. Expiration of Site Plan Approval**

(1) Approval of the site plan shall expire one (1) year from the date of approval if a building permit has not been issued or if use of the property in accordance with the Site Plan approval has not commenced, in cases where a building permit is not needed. The Planning Board may grant an extension of the site plan approval for up to one additional year when the applicant is able to demonstrate a legitimate need to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors. The applicant shall apply to the Planning Board for such extension, prior to the expiration of the Site Plan Approval. The extension of the site plan approval is deemed to be a *de minimus* action that does not require a public hearing. However, the Planning Board may choose to hold a public hearing prior to any such extension.

(2) Approval of the site plan shall expire if the use of the property in accordance with the site plan approval shall cease continuously for one (1) year.

**G. Abandoned Application**

If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Planning Board, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.

"No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information

that are required by this Code or by the requirements of the State Environmental Quality Review Act.

## H. Revocation of Site Plan Approval

The Planning Board shall have the authority to revoke the site plan approval, after a public hearing, if the current owner or operator fails to comply with any condition(s) of approval of the application. Prior to a public hearing on this issue, the Zoning Official shall pursue abatement of the failure to comply as a violation in accordance with Article 8 of this Code.

## I. Amendments to Approved Site Plan

Any change to an approved Site Plan shall require an amendment to that Site Plan approval by the Planning Board. An application for an amendment to the approved site plan shall include a revised site plan and a letter discussing the proposed change and the necessity for that change.

Upon receipt of an application for an amendment to an approved Site Plan, the Planning Board shall determine if the amendment is a minor or major amendment. A minor amendment shall include the following and similar insignificant changes:

(1) minor changes to the Landscaping Plan, such as a change in the types of plantings, provided the amount of buffering or landscaping is essentially the same as the approved plan; and/or
(2) reconfiguration of the parking lot, where the number of parking spaces does not fall below the minimum requirement; and/or
(3) change in location of garbage dumpsters, light poles, or similar site features, where the overall level of service will not change; and/or
(4) change in location of access driveway, provided that such driveway meets all the criteria in Article 5 of this Law; and/or
(5) minor realignments of water lines, sanitary sewer lines, and storm drainage facilities that may be necessary during construction, as approved by the Town Engineer.

Any other change to the site plan, including new buildings or the expansion of existing buildings, shall be considered a major site plan amendment.

If the Planning Board determines that the requested change is minor (a *de minimus* action), the Board may approve the amendment administratively, without a public hearing or referral to the Cattaraugus County Planning Board.

If the Planning Board determines that the requested change is major, the Board shall follow the review and approval process contained in this Article, as if it were a new application.

## Section 7.5 Standards for Review

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

**A.** The proposed project is consistent with the Town's Comprehensive Plan, and any amendments thereto; and

**B.** The proposed project is consistent with the general purposes and intent of this Code, and complies with all applicable regulations of this Code; and

**C.** The proposed project will not result in the destruction, loss or damage of a natural, scenic or historic feature of major significance; and

**D.** The proposed project is compatible with the natural features of the site; and

**E.** The character and design of the proposed site plan presents a coherent, unified and consistent appearance, and adequately provides for the following features:
(1) There is adequate on-site parking provided, both in terms of number of spaces and their arrangement on the lot.
(2) The internal circulation system is adequate for the activities and uses proposed.
(3) Adequacy of the means of access and egress to and from the site, for both pedestrians and vehicles.
(4) Loading and unloading zones are adequate for the anticipated delivery and service vehicles, and their location does not affect other vehicular or pedestrian traffic.
(5) Loading zones, trash receptacles and mechanical equipment areas are adequately screened from adjacent properties and from within the site.
(6) Size, design, number, placement and arrangement of signs is the minimum necessary to convey the required information and the signage plan is consistent with the overall architectural character of the development.
(7) The location and design of the proposed site lighting is adequate for safety, contains minimal impact to adjacent properties in terms of light spillage, and is consistent with the architectural design of the development; and

**F.** Buildings and structures within the proposed project are compatible with one another in design, mass, scale, style, materials, colors and architectural detailing; provide a sense of cohesion; and conform to the requirements of Article 13 of this Law; and

**G.** The proposed project is compatible in design, mass, scale, style, materials, colors and architectural detailing with the prevailing architectural standards in the general neighborhood, and the orientation of the proposed buildings is compatible with the orientation of buildings on adjacent lots; and

**H.** The landscaping proposed for the site, including the type and arrangement of trees, shrubs, other plant material, ground covering material, walls and fences, pavement and any other landscaping features, is cohesive in nature; is adequate and appropriate to the site; and conforms to the requirements of Section 12.6 of this Law; and

**I.** If required, any buffering between the project site and adjacent properties is attractive and adequate and conforms to the requirements of this Law; and

**J.** The proposed water supply and sanitary waste disposal systems meet the standards of the Town, NYS Department of Environmental Conservation and the Cattaraugus County Health Department; and

**K.** The grading plan, if required, has been determined to be adequate by the Town Engineer; and

**L.** The drainage plan has been determined to be adequate by the Town Engineer; and

**M.** If adjacent or neighboring properties contain existing solar facilities, the proposed project will not adversely affect the solar access of those facilities; and

**N.** Any proposed open space is usable for the purpose for which it is proposed. Adequate legal provision has been made such that these areas will remain as permanent open space. Adequate provisions have been made for the maintenance of the open space areas.

## Section 7.6 Planning Board Findings

Prior to approving a Site Plan application, the Planning Board shall make all of the following findings:

**A.** The proposed project is consistent with the Town of Ellicottville Comprehensive Plan.
**B.** The proposed project will not unreasonably interfere with the orderly land use and development in the Town of Ellicottville.
**C.** The benefits to the applicant and the public of the proposed project will exceed any burdens to the Town and residents therein.
**D.** The proposed project will not be detrimental to the public health, safety or welfare of the community.
**E.** The proposed project complies with all applicable provisions of this Law, including the standards in Section 7.5, or will comply with those provisions based on conditions that will be attached to the approval, unless variances have been properly granted by the Town of Ellicottville Zoning Board of Appeals.

# ARTICLE 8
# ADMINISTRATION AND ENFORCEMENT

## Section 8.1 General Procedure

### A. General Sequence of Steps

This Law shall be administered and enforced by the Town's Zoning Official. All persons desiring to undertake any new construction, structural alteration, or change in the use of a building or lot shall apply to the Zoning Official for a Zoning Permit by filing the appropriate application form and by submitting the required fee. The Zoning Official will then either issue or refuse the Zoning Permit or refer the application to the Planning Board.

In the event that the Zoning Official issues the Zoning Permit, the applicant may proceed to undertake the action permitted in the Zoning Permit and upon completion of such action, shall apply to the Zoning Official for a Certificate of Zoning Compliance.

**B. Zoning Permit Types**. Under the terms of this Code, the following classes of Zoning Permits may be issued:

(1) **Permitted Use**. A Zoning Permit for a permitted use shall be issued by the Zoning Official on his/her own authority.

(2) **Special Use**. A Zoning Permit for a Special Use shall be issued by the Zoning Official upon the issuance by the Planning Board of a Special Use Permit, pursuant to the regulations of Article 6 of this Code.

(3) **Zoning Permit After an Appeal or a Request for a Variance**. A Zoning Permit shall be issued by the Zoning Official upon the issuance by the Zoning Board of Appeals of a use and/or area variance, issued pursuant to the regulations of Article 9 of this Code.

(4) **Zoning Permit After Site Plan Review.** A Zoning Permit shall be issued by the Zoning Official upon the issuance by the Planning Board of an application for Site Plan Review, issued pursuant to the regulations of Article 7 of this Code.

## Section 8. 2 Zoning Permits

### A. General Requirements

(1) No building or structure shall be erected, added to, or structurally altered until a permit therefore has been issued by the Zoning Official. Except upon written order of the Zoning Board of Appeals, no such Zoning Permit or Certificate of Zoning Compliance shall be issued for any building where said construction, addition, or alteration of use thereof would be in violation of any of the provisions of this Code.

(2) For any project that requires a discretionary or non-discretionary permit from the Town of Ellicottville, no physical alterations to the site, including grading and clearing, shall be commenced until the required permits have been obtained.

**B. Application**

Application for a zoning permit may be combined with the application for a building permit. All applications for a zoning permit shall contain the following information:

(1) A minimum of two copies of a plot plan, drawn to scale, showing the lot dimensions and the location and size of all proposed structure(s), driveways and other improvements on the lot. A certified survey prepared by a land surveyor licensed by the State of New York may be required on projects with structures on or near the lot lines or when the lot lines are difficult to determine from existing plats and monuments. Topographic data may be required when the site is sloping or when the building height cannot be readily determined from the elevations without topographic data.

(2) The location and size of adjacent utility lines and a statement regarding the type of sewerage disposal and water supply facilities to be provided.

(3) The name, address and telephone number of the owner or responsible agent. If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted.

(4) Street address of the lot.

(5) Tax map number of the lot.

(6) Any other information required by the Zoning Official that is necessary to make a determination pursuant to this Law.

(7) All required fees.

**C. Review by Zoning Official**

The Zoning Official shall review the application to determine if the proposal is (1) a permitted use or special permitted use within the zoning district in which the site is located; (2) complies with all the dimensional requirements of this Code, in terms of height, setbacks, yards and lot coverage, etc.; (3) complies with all other requirements of this Code; and (4) requires site plan review pursuant to this Code.

**D. Zoning Official's Determination**

**(1) Issuance of Permit.** If the Zoning Official determines that all requirements of this Law are satisfied, or upon order by the Planning Board or Zoning Board of Appeals, the

Zoning Official shall issue a Zoning Permit, provided that all other reviews and actions, if any are called for in this Law, have been complied with and all necessary approvals have been obtained**.**

(2) **Referral of Permit.** If the Zoning Official determines that the proposed project requires a Special Use Permit and/or Site Plan Review, he/she shall refer the application to the Planning Board and shall so notify the applicant. In this instance the Zoning Official shall take no action on the Zoning Permit application until the Planning Board has made a determination and notified the Zoning Official of that determination**.** That notification shall include a copy of the Planning Board's Notice of Decision, which shall contain all conditions of approval, if any. Applicable conditions of approval shall be satisfied prior to the issuance of the Zoning Permit.

**(3) Denial of Permit.** When the Zoning Official is not satisfied that the applicant's proposed development will meet the requirements of this Law, he/she shall deny the application for a Zoning Permit. The applicant may appeal to the Zoning Board of Appeals for a reversal of the Zoning Official's decision**.**

## E. Filing of Decisions

(1) The Zoning Official shall return one copy of the plot plan to the applicant, along with the Zoning Permit, or with a written denial of the zoning permit, which shall state the reasons for such denial. If the proposal has received approval from either the Planning Board or Zoning Board of Appeals, the Notice of Decision issued by that Board shall be substituted for the plot plan. The Zoning Permit may be incorporated into other permits issued by the Town, such as a Building Permit.

(2) The Zoning Official shall retain the second copy of the plot plan, along with the application and a copy of his/her determination, as a permanent record.

(3) The Zoning Official shall file in his/her office a copy of each decision, determination, interpretation, order, and/or requirement that he/she makes, within five business days from the day it is rendered.

## F. Expiration of Zoning Permit

A Zoning Permit shall run concurrently with any building permit that is issued as part of the same application and shall expire when the building permit expires. If no building permit is issued, the Zoning Permit shall expire one year from the date of issuance.

## G. Revocation of Permits

If it shall appear, at any time, to the Zoning Official that the application is in any material respect false or misleading, or that work is being done upon the premises differing materially from that called for in the application filed with him/her under existing laws or

ordinances, he/she may forthwith revoke the Zoning Permit, whereupon it shall be the duty of the person holding the same to surrender it and all copies thereof to said Zoning Official.

When a Zoning Permit has been revoked, the Zoning Official shall re-issue the Zoning Permit, in the event the applicant establishes that the work will comply with the Permit as originally issued. Before re-issuing the Zoning Permit, the Zoning Official shall notify the Town Board, which may require the applicant to file an indemnity bond in the favor of the Town with sufficient surety conditioned for compliance with this Law and all building laws and ordinances then in force and in a sum sufficient to cover the cost of removing the building if it does not so comply.

## H. Project Completion

It is expected that all projects will be completed pursuant to approvals in timely manner. The Planning Board may require the applicant to post a performance bond or other security as recommended by the Counsel to the Town, which will allow the Town to complete landscaping and other project features.

For projects that are approved in phases, if necessary, the Planning Board will approve temporary turnaround areas, which will be designed to accommodate emergency vehicles, which will be constructed for earlier phases of the project. As phases are built, temporary turnaround areas may be eliminated, according to the approved phasing plan.

If construction stops temporarily for more than 60 days, the site must be stabilized. This will consist of grading and reseeding of the property. Undeveloped portions of the property shall be mowed a minimum of four times per year. The applicant can request a waiver of this stabilization provision from the reviewing Board that granted the approval, or from the Building Official if no discretionary approval was issued.

## I. Certification of As-built Project

In order to ensure that all site features of a project are completed as shown on the plans approved by the Planning Board or any other Board that may have approval authority, prior to the issuance of a Certificate of Zoning Compliance and a Certificate of Occupancy, the project sponsor shall provide a Letter of Certification from a licensed professional engineer, surveyor or architect, licensed in the State of New York. The Letter of Certification shall state that the project, as built, complies with the approved plans for the project. The certification shall be accompanied by As-built plans of the site. The certification shall include non-public features such as landscaping, lighting, storm sewers and basins, sidewalks, parking lots, private roads, screening features, fencing and any other site feature approved by the Board. Features of the site covered by the Building Code shall be exempt from this provision.

Following receipt of the Letter of Certification and the As-built plans, there will be a walk through inspection by the Building Official, Zoning Official and/or Town Engineer with the

licensed professional providing the certification and with the project contractor. The Town Board may establish a fee for this post-construction inspection.

This provision shall apply to:

a. All Master Planned Developments, except for MPDs that consist of no more than two residential units; and
b. All Site Plan Review and Special Use Permits for commercial or industrial developments, except for Home Occupations, Home Retail and Service Establishments, Accessory Apartments, Manufactured/Mobile homes on single family lots, Bed & Breakfast establishments, and any other use that is generally accessory to the principal use of a site as a single family home.
c. Agricultural uses shall be exempt from this provision

This certification and walk through inspection shall be completed prior to the issuance of a Certificate of Zoning Compliance and a Certificate of Occupancy. However, the Planning Board may authorize the Building Official and Zoning Official to issue temporary Certificates, if a performance bond has been posted in an amount sufficient to guarantee completion of the project as approved. The Planning Board shall establish a maximum period of time during which the temporary Certificates are valid. The issuance of temporary Certificates may be warranted, for example, in cases where the timing of the completion of construction does not allow adequate time to complete all required landscaping prior to the onset of winter weather. In such cases a performance bond is needed to ensure that the proposed development will be built in compliance with the approved site plan. The sufficiency of such performance bond shall be determined by the Town Board, after consultation with the Planning Board, Town Engineer, Counsel to the Town, and/or other appropriate parties.

## Section 8.3 Certificates of Zoning Compliance

**A.** No land shall be occupied or used and no structure hereafter erected, altered or extended and no change in use shall occur until a Certificate of Zoning Compliance shall have been issued by the Zoning Official.

**B.** Application for Certificate of Zoning Compliance shall be made within fifteen (15) days of completion of the structure, alteration, or other work.

**C.** A Certificate of Zoning Compliance shall be issued by the Zoning Official within thirty (30) days after the application is received**,** if all work completed is in compliance with the provisions of this Law, including any variances or other permits that may have been issued.

**D.** The Zoning Official shall maintain a record of all Certificates of Zoning Compliance. Copies of said certificates shall be furnished upon request to any person having a proprietary or tenancy interest in the parcel or building affected.

## Section 8.4 Violations and Penalties

### A. Enforcement Official

The Zoning Official is hereby designated as the Town official who is charged with the administration and enforcement of this Law. The Zoning Official is authorized to make inspections of property, to respond to complaints, to issue Notices of Violations and to issue Appearance Tickets, where necessary to enforce the provisions of this Law. The Town Board may designate other officials as deputy enforcement officials to help in the enforcement of the provisions of this Law. If the Zoning Official is in doubt as to the meaning or intent of any provision of this Law or as to the location of any district boundary line on the zoning map or as to the propriety of issuing a building permit, zoning permit or Certificate of Zoning Compliance in any particular case, he/she shall appeal the matter to the Zoning Board of Appeals for interpretation and/or decision.

### B. Complaints of Violations

(1) Any person may file a complaint with the Zoning Official that a violation of this Law may have taken place or is allegedly taking place. All complaints shall be in writing and shall specify the property on which the alleged violation has occurred.

(2) The Zoning Official shall record and investigate any such written complaint.

(3) The Zoning Official shall also investigate any alleged violation that he/ she has reason to believe has occurred or is occurring.

### C. Inspection

(1) The Zoning Official is hereby empowered to cause any building, structure or lot or other tract of land to be inspected and examined for the purpose of determining whether it is in compliance with this Law and/or whether any violation of any provision of this Law has occurred or is occurring. Except in cases where the alleged violation is in plain view and/or where no entry is necessary, or except in cases where an imminent peril exists as determined by the NYS Uniform Fire and Building Code, the Zoning Official shall obtain approval from an owner, lessee, agent, tenant, or other person with authority to authorize an inspection of the property. However, if the property owner, lessee, agent or tenant does not grant permission for such inspection, this refusal shall be an adequate basis for revoking the zoning permit or certificate of zoning compliance.

(2) Following the inspection of the property, the Zoning Official shall file a written report, which shall detail the findings of his/her inspection, with the Town Board. If the inspection was the result of a complaint, a copy of the report shall be sent to the person who filed the complaint.

## D. Notice of Violation

(1) If the Zoning Official finds that a violation of this Law exists on the property, he/she shall prepare a written Notice of Violation which shall contain the following information:

(a) The name of the person to whom the Notice is addressed;
(b) The location of the premises involved in the violation;
(c) A statement setting forth the specific violations of this Code with which the person is charged, including the section(s) alleged to have been violated, and the facts supporting such allegations;
(d) A demand that the violation be remedied to comply with this Law. The Notice shall set a reasonable time period for compliance. (For example, within 15 days of the date of the Notice of Violation.); and
(e) A statement that a failure to comply with the demand will result in prosecution.

(2) The Notice of Violation shall be served by personal service or by certified mail, return receipt requested, addressed to the last known address of the property owner, occupant, or other person in possession or control thereof.

(3) **Extension.** Upon application of the person served with a Notice of Violation showing reasonable cause, the Zoning Official may grant an extension of up to thirty days for the owner or occupant to comply with the Notice of Violation.

## E. Stop Work Order

Along with the Notice of Violation, the Zoning Official shall also revoke the Zoning Permit, issue a Stop Work Order and/or revoke the Building Permit for any construction that may be on-going.

## F. Appearance Ticket

If, after the expiration of the time period specified in the Notice of Violation, or after the completion of any extension period, the owner or occupant shall fail to comply with the requirements of this Law, the Zoning Official or Town Board may institute enforcement procedures as follows:

(1) The Zoning Official is hereby authorized, pursuant to Criminal Procedure Law Section 150.20 (3), to issue an appearance ticket to any person whom the enforcement Official has reason to believe has violated this Law, and shall cause such person to appear before a court having jurisdiction of the matter.

(2) After the appearance ticket has been issued, the Zoning Official shall file an Information and Supporting Deposition with the local justice and shall take such other and further actions as may be necessary to bring the matter to conclusion.

## G. Penalties

(1) A violation of this Law is herby declared to be an offense, punishable, for a conviction of a first offense, by a fine of not more than three hundred fifty dollars ($350.00) or by imprisonment for a period not to exceed six months or both; for conviction of a second offense, both of which were committed within a period of five years, punishable by a fine not less than three hundred fifty dollars ($350.00) nor more than seven hundred dollars ($700.00) or imprisonment for a period not to exceed six months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five years, punishable by a fine not less than seven hundred dollars ($700.00) nor more than one thousand dollars ($1,000.00) or imprisonment for a period not to exceed six months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officers, violations of this Law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations.

(2) Each week's continued violation shall constitute a separate additional violation.

## H. Other Remedies

(1) In addition to the foregoing remedies, the Town Board may institute any appropriate action or proceeding to prevent, correct or restrain any violation of this Law, including, without limitation, an action or proceeding seeking an order authorizing the Town to correct the violation and collect the costs incurred by the Town in connection with the proceeding and necessary legal expenses incidental thereto by assessing the same against the parcel of land on which the violation is occurring and levying and collecting such costs and expenses in the same manner as provided for the levy and collection of a special *ad valorem* levy.

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

# ARTICLE 9
# ZONING BOARD OF APPEALS

## Section 9.1 Establishment of Zoning Board of Appeals

### A. Appointment

(1) The Town Board of the Town of Ellicottville, pursuant to the provisions of the Town Law applicable thereto, shall appoint a Zoning Board of Appeals consisting of five members. The terms of office shall be five years, excepting that the five members first appointed shall serve for terms of one, two, three, four and five years. All terms of office shall expire at the end of the calendar year. Members of the Town Board are not eligible for membership on the Zoning Board of Appeals.

(2) The Town Board shall designate the chairperson of the Zoning Board of Appeals. In the absence of a chairperson, the Board of Appeals may designate a member to serve as acting chairperson.

### B. Vacancies

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

### C. Training and Attendance Requirements

(1) Members of the Zoning Board of Appeals shall complete annual training as required by the Town Law, Section 267.7-a.

(2) The Town Board may establish minimum requirements for attendance at Zoning Board of Appeals meetings.

## Section 9.2 Powers and Duties

**A.** With due consideration for the purpose and intent of this Law, and without limiting the powers with which the Board is vested by Sections 267, 267-a or267-b of the Town Law, the Zoning Board of Appeals shall have the power and authority to:

(1) After a public hearing, approve, approve with conditions, or deny each application for a use or area variance.

(2) Hear and determine appeals from and review any order, requirement, decision or determination made by the Zoning Official charged with the enforcement of this Code. The Board may reverse or affirm, wholly or partly, or may modify the order,

requirement, decision, interpretation or determination appealed from and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all the powers of the Zoning Official.

(3) After a hearing, revoke any decision to grant a variance, if the current owner or operator fails to comply with any conditions of approval of the original application. Prior to a public hearing on this issue, the Zoning Official shall pursue abatement of the failure to comply as a violation in accordance with Article 8 of this Law.

(4) Prescribe rules for the conduct of its affairs and forms for the submission of applications for its consideration.

(5) Call upon any department, agency, employee of or consultant to the Town for such assistance as shall be deemed necessary and as shall be authorized by the Town Board.

**B. Meetings**

(1) Meetings of the Zoning Board of Appeals shall be held at the call of the chairperson, and at such other times as the Zoning Board of Appeals may determine.

(2) The chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.

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

(4) A quorum shall consist of three (3) members.

## 9.3 Procedure

**A. Application and Filing of Appeals**

(1) Each order, requirement, decision, interpretation or determination of the Zoning Official shall be filed, in writing, in his/her office within five business days from the day it is rendered, and shall be a public record**.**

(2) Any party aggrieved by a decision of the Zoning Official shall have sixty (60) days after the filing of such order, requirement, decision, interpretation or determination to file an appeal with the Zoning Board of Appeals and with the Zoning Official.

(3) The appeal shall be in writing, on forms prescribed by the Zoning Official, and shall specify the grounds for the appeal and the relief sought. Every appeal shall refer to the specific provision of this Law that is involved and shall exactly set forth the

interpretation that is claimed or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted. The appeal shall also contain the following information:

(a) The name and address of the appellant /applicant, and property owner, if different from the applicant. If the applicant is not the owner of the property, the applicant shall submit a statement from the property owner that gives his/her permission for the application to be submitted.

(b) The location of the lot.

(c) A statement of the current use of the site.

(d) An accurate description of the additions or changes intended to be made under this application, indicating the size of such proposed improvements, material and general construction thereof, if applicable.

(e) A plot plan of the site, drawn to scale, with a north arrow, indicating the location and size of the lot, location and size of existing structures, and location and size of proposed structures and/or other improvements. Distance from the existing and proposed structure**s** to all lot lines shall be indicated. If the Zoning Board of Appeals determines that it is necessary, the Board may require a survey prepared by a licensed surveyor that shows building locations and lot lines.

(f) An Environmental Assessment Form, with Part I completed and signed by the applicant, if applicable**.**

(g) All required fees.

(4) The Zoning Official shall transmit to the Zoning Board of Appeals copies of all the papers constituting the record of the appealed action.

**B. Hearing**

(1) Before acting on any matter appealed to it, the Zoning Board of Appeals shall hold a hearing. The hearing shall be held within 62 days of the date that the complete appeal is received. The Zoning Board of Appeals shall determine when the appeal is complete.

(2) Notice of the hearing shall be published in the following ways:

(a) by publication in a newspaper of general circulation in the Town at least five days prior to the date of the hearing; and

(b) by mailing a notice of the hearing to the owners of every parcel that is within one hundred (100) feet of the perimeter of the site that is the subject of the application. However, if a townhouse or condominium project is one of the properties within

the 100 foot radius from the applicant's property or if a Homeowners Association owns one of the properties within said 100 foot radius, notice shall be given to the Management Committee, Board of Directors, the condominium owner's association, or the Homeowners Association rather than to each individual unit owner. Notice may also be mailed to such other persons as the chairperson of the Zoning Board of Appeals may direct. Such notices shall be mailed to the address shown on the current assessment roll, at least ten (10) days prior to the hearing; and

(c) by mailing a notice to the applicant at least ten (10) days prior to the hearing; and

(d) for all appeals that meet the requirements contained in Section 239-m of the General Municipal law, the Zoning Board of Appeals shall mail notice of such hearing to the Cattaraugus County Planning Board. Such notice shall be mailed at least five (5) days prior to the hearing; and

(e) for a use variance only, where the site is located within 500 feet of any municipal boundary, a notice of hearing shall be mailed to the clerk of that municipality at least ten (10) days prior to the public hearing.

(3) At the hearing any person may appear in person, by agent or by attorney.

**C. Stay of Proceedings**

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

**D. Decision**

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

(2) All decisions of the Board shall be by resolution and shall contain a full record of the findings of the Board, the evidence considered, the persons who have appeared, the vote or abstention of each member and every other official act of the Board in connection with the application. The required findings of the Board shall disclose the facts upon which they are based.

(3) Except as provided in Sub-section 9.3 F, Rehearing, every motion or resolution of the Board of Appeals shall require the concurring vote of a majority of the total membership of the Board for its adoption. If the action has been referred to the

Cattaraugus County Planning Board, pursuant to Section 239-m of General Municipal Law, the voting provisions of that law shall apply.

(4) If an affirmative vote of a majority of all the members of the Zoning Board of Appeals is not attained on a resolution to grant a variance or reverse any order, requirement, decision or determination of the Zoning Official, the appeal is denied, pursuant to Section 267-a.13b of the Town Law. In that event, the Board may amend the failed resolution and vote on the amended resolution within the time allowed without being subject to the rehearing process required by subdivision F of this Section.

**E. Filing Of Decision and Notice To The Applicant**

(1) Every decision of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days after the day such decision is made and shall be a public record.

(2) A copy of the decision of the Zoning Board of Appeals shall be mailed to the applicant within five (5) business days of the decision.

**F. Rehearing**

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

**G. Expiration of Grant of Variance**

(1) A variance shall expire one (1) year from the date of approval if a building permit has not been issued or if use of the property in accordance with the grant of variance has not commenced, in cases where a building permit is not needed. The Zoning Board of Appeals may grant an extension of the variance for up to one additional year when the applicant is able to demonstrate a legitimate need to delay the start of construction or operation, such as inclement weather, delays in financing, or similar factors. The applicant shall apply to the Zoning Board of Appeals for such extension, prior to the expiration of the grant of variance. The extension of the grant of variance is deemed to be a *de minimus* action that does not require a public hearing. However, the Board of Appeals may choose to hold a public hearing prior to any such extension of the grant of variance.

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

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

### H. Abandoned Application

If there is no activity by the applicant on the application within six (6) months of the initial application date or from the date that additional material is requested by the Zoning Board of Appeals, whichever is later, the Board shall deem the application to be abandoned and shall deny the application.

"No activity" means that the applicant is not diligently providing the Town with information necessary to proceed with review of the application, including materials and/or information that are required by this Code or by the requirements of the State Environmental Quality Review Act.

## Section 9.4 Variances

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

### A. Use Variances

(1) In order for the Zoning Board of Appeals to grant a use variance, the applicant shall show that the applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship, the applicant shall demonstrate to the Zoning Board of Appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located:

(a) The applicant cannot realize a reasonable return, provided that lack of return is substantial, as demonstrated by competent financial evidence; and

(b) The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood; and

(c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) That the alleged hardship has not been self-created.

(2) The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship

proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**B. Area Variances**

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

(a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance.

(b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.

(c) Whether the requested area variance is substantial.

(d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

(e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board, but shall not necessarily preclude the granting of the area variance.

(2) The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

**C. Imposition of Conditions**

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

# ARTICLE 10
# NON-CONFORMING BUILDINGS, STRUCTURES, LOTS, AND USES

## Section 10.1 Purpose

This Article describes the status of land or structures and/or the uses of land or structures which were lawful before these regulations were passed or amended, but which are now or became prohibited, restricted or substandard. While permitting non-conforming uses, structures and improvements thereto to continue, this Article is intended to limit enlargement, alteration, restoration or replacement which would increase the discrepancy between existing conditions and the development standards prescribed by this Code.

## Section 10.2 Continuation of Use

Except as otherwise provided herein, any lawfully established building, structure or land, and any use thereof, existing at the time of the enactment of this Law or amendments thereto may be continued, even though such use does not conform with the provisions of this Code. No unlawful building, structure, lot or land or unlawful use of a building, structure, lot or land existing at such effective date shall be deemed to be a nonconforming building, structure, lot, parcel of land, or use.

## Section 10.3 Change of Use/Abandonment

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

**B.** Whenever a non-conforming use of a building, structure, or lot, or part thereof, has been discontinued for any reason or cause for a period of twelve consecutive months, such use shall be deemed to have been abandoned and shall not be re-established, and the use of the premises thereafter shall be in conformity with the regulations of the district in which it is located.

## Section 10.4 Repairs

**A.** Normal maintenance of a non-conforming building or structure is permitted.

**B.** However, unless changed to a conforming use, a non-conforming building, structure or lot, or a building or structure that is used for a non-conforming use, may not be reconstructed or

substantially improved to an extent exceeding in aggregate cost fifty (50) percent of the market value of the building or structure at any one time. Market value shall be determined by dividing the assessed value by the equalization rate. If reconstruction or improvement that meets these criteria does occur, there shall be a five year wait period before the property owner can again reconstruct or make a substantial improvement.

**C.** A building or structure that is used for a conforming use but that does not meet the dimensional requirements of this Law may not be expanded, if by such expansion the setbacks or other dimensional requirements would become more non-conforming, unless an area variance for such expansion is granted by the Zoning Board of Appeals.

## Section 10.5 Restoration

No building or structure damaged by fire, flood or other causes to the extent of more than fifty (50) percent of its market value shall be repaired, rebuilt, restored, reconstructed or rehabilitated except in conformity with the regulations of this Law. (Market value shall be determined by dividing the assessed value by the equalization rate.) All damaged buildings or structures must be repaired or razed within a period of twelve months from the date the damage occurred.

## Section 10.6 Extension

**A.** A building or structure that does not conform to the current dimensional regulations of this Code can be used for any permitted or special permitted uses that may be allowed by this Law, upon obtaining any necessary permits and/or approvals that would otherwise be required for a conforming structure.

**B.** A legal, non-conforming use that was established prior to the enactment of this Law, or any amendments thereto, by the provisions of which the use became non-conforming, may continue; however, such non-conforming use may not be expanded, extended or enlarged, unless a use variance for such expansion is obtained from the Zoning Board of Appeals.

## Section 10.7 Lots of Record

Any lot of record, which legally existed at the time of the initial adoption of this Law, or which was legally created under the provisions of any zoning law that was in effect at the time the lot was created, and which does not meet the requirements for minimum lot width and/or minimum lot size that now apply, may be used for a permitted use.

# ARTICLE 11
# AMENDMENTS

## Section 11.1 Town Board May Amend

The Town Board may, from time to time, on its own motion, or on petition, or on recommendation of the Planning Board, amend, supplement or repeal the regulations, restrictions, boundaries and provisions of this Code, after public notice and hearing as provided herein.

## Section 11.2 Planning Board Review

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

## Section 11.3 Contents of Petition

A petition to change the zoning district of any land within the Town of Ellicottville shall be filed with the Zoning Official, who shall refer it to the Town Board. The petition shall identify the land that is the subject of the application by tax map number and by street address. The petition shall state the current zoning designation of the property, the proposed zoning district and the proposed future use of the property. The petitioner shall state if he/she is the owner of record of the property for which the change is requested.

In the event the Town Board elects to hear the petition from a property owner or a recommendation from the Planning Board, the Town Board shall set a date for a public hearing and comply with the other referral provisions of this Code.

## Section 11.4 Public Notice

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

**A.** Notice of the public hearing shall be published at least ten (10) days in advance of such hearing in a newspaper of general circulation in the Town. Such notice shall state the general nature of the proposed amendment in such reasonable detail as will give adequate notice of its contents, and shall name the place or places where copies of the proposed amendment may be examined.

**B.** In addition, the following notices shall be given, if applicable:

(1) A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any State Park shall be mailed to the Regional State Park Commission having jurisdiction over such State facility at least ten (10) days prior to the date of such public hearing.

(2) A written notice of any proposed change or amendment affecting property within 500 feet of the boundary of any city, village, town, or county, shall be mailed to the clerk of such municipality at least ten (10) days prior to the date of such hearing.

(3) A written notice of any proposed change or amendment affecting property within 500 feet of the property of any housing authority erecting or owning a housing project authorized under the public housing law shall be mailed to the executive director of such housing authority and to the chief executive officer of the municipality providing financial assistance thereto, at least ten (10) days prior to the date of such hearing.

## Section 11.5. Public Hearing and Adoption

**A.** The hearing shall be held at the stated time and place by the Town Board and shall include an opportunity for all interested persons to be heard in a manner prescribed by the Town Board.

**B.** Prior to final action by the Town Board on the proposed amendment, it shall be referred to the Cattaraugus County Planning Board pursuant to the provisions of Section 239-m of the General Municipal Law.

**C.** Prior to final action by the Town Board on the proposed amendment, the Town Board shall complete SEQRA review pursuant to the provision of the state environmental quality review act.

**D.** Any such amendments may be approved by a simple majority vote of the Town Board, except that any such amendment shall require the approval of at least three-fourths of the members of the Town Board in the event such amendment is the subject of a written protest, presented to the Town Board and signed by:

(1) The owners of twenty (20) percent or more of the area of land included in such proposed change; or

(2) The owners of twenty (20) percent or more of the area of land immediately adjacent to that land included in such proposed change, extending one hundred (100) feet therefrom; or

(3) The owners of twenty (20) percent or more of the area of land directly opposite thereto, extending one hundred (100) feet from the street frontage of such opposite land.

## Section 11. 6 Filing Requirements

**A.** Amendments made to this Law, excluding any map incorporated therein, shall be entered in the minutes of the Town Board. Such minutes shall describe and refer to any map adopted in connection with the amendment.

**B.** A copy or a summary of the amendment, excluding any map incorporated therein, shall be published once in a newspaper published in the Town, if any, or in a newspaper having circulation in the Town and published in Cattaraugus County, as the Town Board may designate.

**C.** Affidavits of the publication of the summary or copy of the amendment shall be filed with the Town Clerk.

**D.** The Town Clerk shall maintain every map adopted in connection with this Law and every amendment thereto. Said documents shall be made available during regular business hours for public inspection.

# ARTICLE 12
# MISCELLANEOUS REQUIREMENTS

## Section 12.1 Signs

### A. Purpose

The purpose and intent of this section of this Code is:

(1) To set forth minimum standards regulating the design, erection, display and maintenance of signs based on the use of land and intensity of development permitted in the Town; to reduce hazards caused by signs overhanging or projecting onto public right-of-way, and by signs that impede or distract traffic or otherwise interfere with public safety; and

(2) To acknowledge that the reasonable display of signs is appropriate as a public service and necessary to the conduct of competitive commerce and industry; and

(3) To enhance and protect the natural beauty, historic and aesthetic qualities and neighborhood values through the Town; to insure the tasteful display of signs in the Town, to prevent the proliferation of signs, which can affect traffic safety and the aesthetics of the Town and to secure economic stability in property values.

### B. Permit Required

Except as hereinafter provided, no person shall erect, alter, construct, relocate or cause to be erected, altered, constructed or relocated any sign without first having obtained a Sign Permit issued by the Zoning Official.

### C. Signs Not Requiring a permit

The following types of signs shall not require a permit, provided that any such sign is not illuminated and that no more than one such sign shall be located on each street frontage of a lot:

(1) Temporary signs, such as signs advertising political candidates, real estate signs, and yard sales signs, whether for commercial, political or private purposes, shall be permitted, subject to the following conditions:
   a. No such sign shall exceed twenty four (24) square feet in area, per sign face.
   b. No such sign shall obstruct traffic or interfere with the line of sight of persons and vehicles using public roads.
   c. Such sign shall not be in place for more than 30 days before the event which is being advertised, and shall be removed within 48 hours after the event being advertised is completed.
   d. Such signs shall not be located in the public right-of-way or on other public property.

e. The name and address of the sponsor and the person responsible for removal are identified.
f. The sign is not illuminated**.**

(2) Signs required by law or needed for official government business or public safety and installed by local, State or Federal authority.

(3) Nameplates not exceeding two (2) square feet in area.

(4) Bulletin boards not exceeding twenty four square feet in area, erected upon the premises of a church, funeral home or public institution for the purpose of displaying the name of the institution and its activities or services. Such signs may include a reader board (changeable copy sign).

(5) Signs denoting the architect, engineer or contractor when placed upon work under construction, and not exceeding sixteen (16) square feet in area, for the designation of one individual or firm. For multiple designations, the sign may be up to 32 square feet in area. No more than one sign per location shall be allowed, and it must be removed within 48 hours after receipt of the Certificate of Occupancy.

(6) Memorial signs or historical tablets, names of buildings and dates of erection, provided that such signs do not exceed two (2) square feet in area.

(7) Any sign painted or lettered directly on a window**,** not to exceed 25 percent of the window area.

(8) Any sign located within a building that is not visible from outside of the building.

(9) Neon signs in the window of a retail establishment not larger than four (4) square feet or 25% of the window area, whichever is less, provided that the sign is lit only during business hours.

(10) Sandwich board signs meeting the following criteria:

a. No sandwich board sign shall be larger than six (6) square feet in area for each face or forty-eight (48) inches in height or width. Such signs shall not be higher than four (4) feet above the adjacent sidewalk or curb.

b. Sandwich board signs shall be designed and located so as not to be an obstruction on any public space or walkway.

c. Sandwich board signs shall not be illuminated and may be displayed only between sunrise and sunset. While on display, such signs shall be securely fastened so as to prevent accidental tipping or blowing over.

(11) Signs not readily visible from a roadway that are necessary and proper to a commercial operation such as, but not limited to, a ski resort or golf course.

(12) "Posted" signs that are displayed in accordance with NYS Department of Environmental Conservation Regulations.

(13) Holiday Decorations

(14) Flags of any nation, governmental entity or organization.

(15) Agricultural signs

(16) Portable Signs: Wheeled signs or other portable signs, excluding sandwich board signs, provided that the sign is not posted more than 7 days before an event and is removed within 24 hours after the event that is advertised.

**D. Prohibited Signs**

The following signs will not be permitted in the Town of Ellicottville.

(1) Signs that constitute a traffic hazard. No sign or other advertising structure as regulated by any of the provisions of this section shall be erected at the intersection of any roads in such a manner as to obstruct free and clear vision; or at any location where, by reason of position, shape or color, it may interfere with, obstruct the view of, or be confused with any authorized traffic sign, signal or device or which makes use of the words, "STOP", "LOOK", "DRIVE-IN", "DANGER" or other word, phrase, symbol or character in such a manner as to interfere with, mislead or confuse traffic.

(2) Indecent, pornographic, or defamatory signs that malign or belittle, any of the following, but not limited to; a person, product, institution, practice or belief.

(3) Signs that contain flashing, moving, or animated parts**,** including an Electronic Message Display, except that one Time and Temperature Unit will be permitted, per sign.

(4) Signs in excess of 96 square feet.

(5) Signs on the top roof of any building. Roof signs are discouraged; however, on buildings with multi-level roofs signs are permitted on the lower roof, provided the sign does not exceed 20 feet in height from grade to the top of the sign and provided that the sign does not exceed 32 square feet in sign area**.**

(6) Signs painted on sidewalks, roads, or curbs.

(7) Signs higher than the building which it identifies or 20 feet from ground to the top of the sign; whichever is less.

(8) Inflatable signs

(9) Vehicle signs

**E. Community Event Signs**

The Town Board may authorize a permit for temporary cloth signs, banners, streamers, etc., which are proposed to be suspended over, or placed on public property. The Town Board may require reasonable liability insurance coverage for such installation. Such temporary signs shall be removed within 24 hours after the advertised event or at the end of the season if a seasonal event is advertised. The regular permit fee and permit process is waived for signs in this category.

**F. General Standards**

The following General Standards shall be adhered to for all signs.

(1) Signs shall be maintained in a safe, legal and well-maintained condition at all times.

(2) Town approval shall in no way eliminate the need for a permit from the New York State Department of Transportation (NYSDOT), when sign is visible to traffic on a State Primary route (e.g. Route 219).

(3) All signs will be constructed of materials that will be permanent in nature and will have a professional appearance. Day-glo and/or reflective lettering is prohibited.

(4) No sign shall encroach onto a public right of way**.**

(5) Signs shall be located so that visibility from driveways and road intersections is not adversely affected.

(6) **Wall signs shall meet the following standards:**

a. A wall sign shall have only one sign face**.**

b. No wall sign shall cover, wholly or partially, any wall opening

c. No wall sign shall project beyond the ends or top of the building wall to which it is attached, nor be set out more than one foot from the face of the building to which it is attached

d. No wall sign shall be erected, relocated or maintained so as to prevent free ingress to, or egress from any door, window or fire escape.

(7) **Ground signs shall meet the following standards:**

a. Ground signs shall have a maximum of two sign faces.

b. Double-faced signs shall be constructed so that the perimeter of both faces coincide and are parallel and not more than 24 inches apart**.**

c. For safety and appearance, no guy wires shall be allowed.

d. Ground signs are encouraged to be placed as close to the ground as possible. When a ground sign is located near a driveway or road intersection, the sign shall be located such that it does not cause restricted visibility for drivers and pedestrians, resulting in a safety hazard.

e. Only one sign per location is allowed.

(i) A location is defined as an entrance way to, or roadway bordering on a plaza, office complex, commercial multi-tenant building, and/or similar multiple use or occupancy site. One sign must advertise all the products or services available at this location. This requirement does not preclude the use of small traffic signs or appropriate wall signs for identifying the occupants or services available in a particular portion of the complex.

(ii) On large commercial-recreation properties requiring significant acreage, such as but not limited to, golf courses or ski resorts, an on-premises directional sign will be permitted every 300 yards on each roadway.

(8) **Illumination**

a. Exterior lighting shall be permitted, provided that illumination is concentrated upon the area of the sign so as to prevent glare upon the road or adjacent property. Lights mounted on the top of the sign projecting downward are preferred.

b. Internally illuminated signs are not permitted.

c. Strobe lights or rotating lights are not permitted as illumination for or as part of any sign.

**G. Off-Premises Signs**

(1) In order to protect viewsheds and view corridors and to prevent sign proliferation, off-premises signs shall only be permitted in the A-R Agriculture-Residential Zoning District.

(2) Off premise signs for any one business will be limited to no more than a total of 3 throughout the town.

(3) Off-premises signs are permitted at intervals no closer than 300 yards.

(4) Each off-premises supporting structure shall contain no more than one, double faced sign**.**

## H. Application Procedure

### (1) Application Requirements

Application for a sign permit shall be made in writing on forms provided by the Town of Ellicottville. Application shall be made to the Zoning Official. The applicant shall submit two copies of all application materials. 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. The appearance of the proposed sign should be described. 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) Decision

a. The Zoning Official shall make a determination on the application for sign permit within 30 days of receipt of a complete application. If the Zoning Official determines that the proposed sign meets the standards of Sub-Sections 12.1F and 12.1I of this Law, he shall issue the sign permit.

b. If the Zoning Official determines that the proposed sign does not meet the criteria

in Sub-section 12.1I, but could comply with the criteria in Sub-section 12.1J, the Zoning Official shall refer the sign permit application to the Planning Board. The Planning Board shall consider the application within 60 days of receipt of a complete application.

**I. Sign Permits issued by Zoning Official**

Upon proper application and payment of the required fee, the Zoning Official may issue a sign permits for:

(1) **Ground Signs** (other than a developer's offering sign) which meet the following standards:

a. does not exceed 32 square feet in area

b. does not contain more than three colors

c. is set back at least 30 feet from edge of right-of-way**.**

d. Meets all the appropriate criteria of this section of this Law**.**

(2) **Wall signs** (other than a developer's offering sign) which meets the following standards:

a. Does not exceed 32 square feet in area

b. Does not contain more than three colors

c. Structure on which mounted is set back at least 30 feet from edge of right-of-way.

d. Meets all the appropriate criteria of this section of this Law**.**

**J. Sign Permits authorized by Planning Board**

(1) The Planning Board may authorize the Zoning Official to issue sign permits for:

a. Ground signs (other than a developer's offering sign) containing one or more variations from the standards set forth in sub-section 12.1I(1) of this Law, by:

(i) Being located closer to the right of way line than 30 feet
(ii) Containing more than 3 colors
(iii) Being between 32 square feet and 96 square feet in sign area

However, maximum height shall not exceed 20 feet. All of the other standards of this Law shall be complied with.

b. Wall signs (other than developer's offering sign) containing one or more variations from the standards set forth in sub-section 12.1I(2) of this Law, by**:**

(i) Structure on which sign is located is closer to the right of way line than 30 feet
(ii) Containing more than 3 colors
(iii) Being between 32 square feet and 96 square feet in sign area

c. Developer's Offering Sign– a permit for a subdivision or Master Planned Development (MPD) offering sign, whether put in place by a real estate developer, contractor or owner, may be issued for a period of six months. The permit may be renewed without payment of an additional fee. These signs, which are expected to be erected for a limited time only, must meet all applicable sign requirements.

d. Projecting signs

(i) Every projecting sign shall be placed so that its lowest point shall be at least eight (8) feet above ground level and the distance of the vertical edge nearest the building shall not exceed three (3) feet from the face of the wall to which it is attached, or shall any sign or part thereof extend nearer the curb line than one (1) foot.

(ii) All letters, figures, characters or representations in cut-out or irregular form maintained in conjunction with, attached to, or superimposed upon, any sign shall be safely and securely built or attached to the sign structure.

(iii)No projecting sign shall be erected, relocated or maintained so as to prevent free ingress to, or egress from, any door, window or fire escape.

(iv)Lighting shall be permitted on projecting signs, provided that illumination is concentrated upon the area of the sign so as to prevent glare upon the road or adjacent property.

(v) Projecting signs exceeding fifty (50) pounds in weight shall not be attached to or supported by frame buildings or the wooden framework of a building. No projecting sign shall be secured with wire, stripes of wood or nails, nor shall any projecting sign be hung or secured to any other sign.

e. Awnings and Canopies

(i) shall not extend beyond a point 12" inside the curb line

(ii) the lowest portion thereof shall not be less than 8 feet above grade level

(iii)Construction of Awnings: Awnings shall be constructed of cloth or metal. However, all frames and supports shall be of metal. Every awning shall be securely attached to and supported by the building.

(iv) Construction of Canopies: Canopies shall be constructed of cloth, metal hood, or other approved materials. The framework of all canopies shall be approved by the Building Official.

(v) Advertising: No advertising shall be placed on any awning or canopy, except the name of the owner and the business, industry or pursuit conducted within the premises. Said advertising may be painted or otherwise permanently placed in a space not exceeding eight inches in height on the front and side portions thereof.

f. Supergraphics

The Planning Board may approve signs painted directly upon building walls, including murals. If such sign is used for advertising purposes, it shall be in lieu of the allowable wall sign and shall comply with all requirements for a wall sign in terms of sign area and height.

g. Signs containing digital displays

The Planning Board may approve a static digital display as part of a sign, provided that the display complies with the following standards:

(i) The digital display is a portion of a sign that otherwise meets the standards of this zoning law.
(ii) The digital display does not take up more than 50% of the sign face area.
(iii) The digital display is not changed more often than twice per day.
(iv) The digital display is static and does not contain animation or moving features.
(v) The digital display contains the minimum number of colors needed to adequately convey the intended message; the planning board may limit the number of colors to be displayed.
(vi) The digital display shall not display light of such luminance so as to cause glare or otherwise impair the vision of a driver, or which results in a nuisance to a driver or abutters on neighboring properties.
(vii) The sign containing the digital display is located in such a way that it does not cause a distraction or a hazard to drivers.

**(2) Criteria for Planning Board approval of sign permits**

The Planning Board may approve, approve with conditions, or deny an application for sign permit. Before the Planning Board issues a sign permit, with or without conditions, the Board must make all of the following findings**:**

a. The proposed sign is consistent with the intent and purpose of this Law.

b. The size, location and configuration of the proposed sign are consistent with the character of the neighborhood in which it is located and compatible with similar signage.

c. The size, location and configuration of the proposed sign are consistent with the intent and purpose of the Comprehensive Plan.

d. The proposed sign does not pose a safety hazard.

e. The proposed sign conforms to all other criteria in this Law.

**K. Maintenance**

(1) Signs shall be maintained in a safe, legal, and undeteriorated condition at all times.

(2) Frames, poles, braces, supports, etc. must be kept painted and maintained free of weeds, brush and debris.

(3) Removal and Maintenance of Signs

a. The Zoning Official may cause any sign which is an immediate peril to persons or property to be removed summarily and without notice, and shall assess all costs and expenses incurred in the said removal against the property on which such sign is located. If said expense is not paid, it will become a lien on the property.

b. Unsafe and unlawful signs must be removed or brought into compliance within 5 days after notification by the Zoning Official. Upon failure to comply with such notice within the prescribed time, the Zoning Official shall remove or cause removal of such sign, and shall assess all costs and expenses incurred in the said removal against the property on which such sign is located. If said expense is not paid, it will become a lien on the property. In addition to any costs incurred pursuant to this paragraph, the violator may be subject to other penalties to the maximum extent allowed by state law.

c. Other damaged or deteriorated signs must be repaired or replaced within 30 days. Upon failure to comply with such notice within the prescribed time, the Zoning Official shall remove or cause removal of such sign, and shall assess all costs and expenses incurred in the said removal against the property on which such sign is located. If said expense is not paid, it will become a lien on the property. In addition to any costs incurred pursuant to the provisions of this paragraph, the violator may be subject to other penalties to the maximum extent allowed by state law.

d. When the sign display is no longer appropriate as a result of, but not limited to the sale, transfer, conversion or demise of a business, product, or person, the sign shall be removed within 7 days.

e. All letters, figures, characters or representations in cut-out or irregular form, maintained in conjunction with, attached to, or superimposed upon, any sign shall be safely and securely built or attached to the sign structure.

**L. Non conforming signs**

(1) If a sign is non-conforming or becomes non-conforming as a result of amendment to these regulations, each non-conforming sign and sign structure shall be allowed to be displayed for a period of time that provides a reasonable opportunity for the owner to benefit from the investment made in the sign.

a. An on-premises non-conforming sign, which is not governed by Section 88 of NYS Highway Law or Section 74-c of General Municipal Law, shall be allowed to be displayed for a period of five (5) years from the effective date of this Law. After this time period has expired, non-conforming signs and sign structures shall be removed or otherwise brought into compliance with the requirements of this Law.

b. A non-conforming, off-premises sign that is not located in the Industrial Zoning District or the Light Industrial-Service Commercial Zoning District, which is governed by Section 74-c of NYS General Municipal Law, shall be allowed to be displayed for the relevant time period specified in Section 74-c(2) of General Municipal Law. After the time period specified in that law, the non-conforming signs and sign structures shall be removed or otherwise brought into compliance with the requirements of this Law.

c. A non-conforming, off-premises sign that is located in the Industrial Zoning District or the Light Industrial-Service Commercial Zoning District and that is governed by Section 74-c of NYS General Municipal Law, shall not be required to be removed, unless such removal is in accordance with the provisions of Section 74-c(1) of NYS General Municipal Law.

d. If a non-conforming, off-premises sign is located in the Industrial Zoning District or Light Industrial-Service Commercial Zoning District, and is subject to the provisions of Section 88 of NYS Highway Law, such sign shall not be required to be removed, unless such removal is in accordance with the provisions of that Law.

(2) Any sign not removed within the time limit herein stated shall be deemed a public nuisance, subject to the removal provisions of this section and shall be removed by the Town of Ellicottville, if the owner of the sign or property owner fails to do so after being so ordered by the Zoning Official. Costs of said removal shall be borne by the property owner and may be recovered by the Town, if necessary, by placing a lien against the property taxes of the parcel.

### M. Signs approved by Site Plan Review

When signs are approved by the Planning Board as part of Site Plan Review or a Special Use Permit, the Zoning Official shall issue sign permits for all signs that conform to that approval.

## Section 12.2 Outdoor Lighting Standards

### A. Intent and Purpose

The Town of Ellicottville is located in a rural area, where one aesthetic characteristic is the ability to see a dark, star-filed night sky. This is a natural resource that should be preserved for the enjoyment of both residents and visitors to the Town. It is the primary purpose of this section of this Law to enact requirements that will help to preserve the night sky.

Additional purposes of this section are:

(1) to permit reasonable uses of outdoor lighting for nighttime safety, utility, security, productivity, enjoyment and commerce; and
(2) to minimize glare, obtrusive light and artificial sky glow by limiting outdoor lighting that is misdirected, excessive or unnecessary; and
(3) to promote illumination levels that are appropriate for the type of activity that will occur on a site; and
(4) to reduce over-lighting of an area by encouraging the reasonable uniformity of illumination levels; and
(5) to conserve energy resources to the greatest extent possible.

### B. Applicability

These outdoor lighting standards shall apply to all new development that requires discretionary approval from the Town, including Master Planned Developments, Special Use Permits, and Site Plan Review. However, the following types of lighting and activities shall be exempt from these regulations:

(1) Commercial recreational uses
(2) Agricultural uses
(3) Lighting required by the FAA and other regulatory agencies
(4) Holiday lighting
(5) Temporary lighting for theatrical, television and performance areas.

## C. Standards

(1) General Standards

a. Exterior lighting and fixtures for building illumination shall blend with the architectural design.

b. Electrical service to outdoor lighting fixtures shall be underground, unless the fixtures are mounted directly on utility poles.

c. All outdoor lighting shall be located to minimize glare and light trespass onto adjacent and neighboring properties. Only the amount of illumination needed to do the job shall be used.

d. To the maximum extent feasible, cut-off style fixtures meeting Illuminating Engineering Society of North America (IESNA) standards shall be installed.

e. To the maximum extent feasible, security lighting should meet IESNA cut-off requirements. If non-cut-off fixtures are used, the Planning Board may require that they be motion sensor lights that turn on only when intruders are detected.

f. Swivel-mounted luminaries are prohibited.

g. Lighting for internal pedestrian walkways (not including sidewalks on public roads that are illuminated by street lights) and park areas, if any, shall be at a pedestrian scale. Bollard lighting may be appropriate.

h. To control light trespass onto adjacent properties, the maximum illumination, when measured at a point five feet within the adjacent property line at a height of five feet and facing the light fixture(s), shall be no greater than 0.1 footcandles.

(2) Building Façades

a. Lighting fixtures shall be carefully located, aimed and shielded so that light is directed only onto the building façade. Lighting fixtures shall not be directed toward adjacent streets or roads.

b. To the extent practicable, lighting fixtures shall be directed downward (i.e. below the horizontal) rather that upward.

(3) Signs

a. Ground signs are encouraged to be illuminated only with downshielded lights installed above the sign.

b. Lighting for signs shall be kept to the minimum needed to read the signs.

(4) Lighting under canopies, including gasoline station canopies

Light fixtures mounted under roof overhangs and canopies shall be recessed so that the lens cover is recessed or flush with the bottom surface (soffit) of the canopy and/or shielded by the fixture or the edge of the canopy so that light is restrained to no more than 85% from vertical.

## Section 12.3 Manufactured (Mobile) Home

### A. Manufactured and Mobile Homes

(1) Where permitted in the Land Use Tables of this Law, one Manufactured or Mobile Home may be located on a lot where a single family home is permitted.

(2) A Manufactured or Mobile homes placed on a single family lot shall conform to the following requirements:

a. Prior to placement of the home on the lot, the homeowner will obtain a building permit, and, if so required in Article 3, special use permit approval from the Planning Board.

b. The manufactured or mobile home shall be located as the principal use on the lot.

c. The lot shall meet the minimum lot size standards of the zoning district in which it is located.

d. The manufactured or mobile home shall conform to all required setbacks and other dimensional requirements of the zoning district in which it is located.

e. The manufactured or mobile home shall be placed on a permanent foundation that meets the manufacturer's installation requirements and all state and local building codes.

f. All towing apparatus, wheels and exposed chassis shall be removed prior to issuance of an occupancy permit.

g. All manufactured homes/mobile homes, which are not installed on a permanent, enclosed foundation that is set below the frost line, shall have skirting installed. The skirting shall screen the entire space between the manufactured home floor and the ground and shall be installed prior to the issuance of an occupancy permit. All manufactured homes shall be completely skirted in an attractive manner. Materials used for skirting shall provide a finished exterior appearance and shall be similar in character to the material used in the manufactured home.

h. No more than one manufactured or mobile home may be located on a lot.

**B. Dependent Manufactured and Mobile Homes**

Dependent mobile homes, other than recreational or vacation trailers with a permit, shall not be located within the Town.

**C. Recreation and vacation trailers**

(1) Recreation or vacation trailers may be located and used in the Town with a 30 day permit obtained from the Zoning Official**.** Said permit may be renewed by the Zoning Official for a total of ninety (90) days.

(2) Individual recreation or vacation trailers may be stored on the property of the owner for an unlimited period, provided that no residence is taken therein or business conducted therewith.

## Section 12.4 Control of Excavating

Where permitted in Article 3 of this Law, all mining, quarrying, removal of topsoil, and sand and gravel extraction shall conform to the following requirements:

**A.** The applicant must personally manage, or be responsible for the management of the activity or business for which the permit is granted.

**B.** The applicant must submit to the Planning Board a plan of operation, including a Reclamation Plan for the excavation site, or a Reclamation Plan that has been submitted to and/or approved by New York State Department of Environmental Conservation as part of a Mined Land Permit.

**C.** No excavation or stockpiling shall take place closer than 500 feet from any inhabited dwelling in existence when the Town's Special Use Permit is issued, and no closer than 200 feet from any property line.

**D.** No excavation shall be performed or proceed to such a depth as to diminish, pollute, or impede the water available to any such person drawing water from a private well located within 2,000 feet of such excavation.

**E.** During the excavation for sand, gravel or soil, the applicant shall be responsible for protection of such excavation. Slope of such grading shall meet current NYS Department of Environmental Conservation standards, whether or not a NYSDEC Mined Land Permit is required, and care shall be taken such that operations and final grade do not pose a safety hazard. Excavation operations shall be conducted to minimize erosion.

**F.** The applicant shall be required to reclaim all affected areas within one year of the cessation of mining activities or within one year of the expiration of Special Use approval by the

Town and/or Mined Land Permit issued by NYSDEC. Before the issuance of a Special Use Permit, the applicant shall execute and file with the Town Clerk, a performance bond, cash deposit, or other security acceptable to the Town Board in an amount to be fixed by the 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. In the event the applicant has obtained a New York State Department of Environmental Conservation Mining Permit, the Town bonding requirements will be waived.

**G.** Extraction of mineral resources and screening of excavated materials may be permitted as mining activities. Processing of mined materials shall not be permitted on site.

**H.** Nothing contained in this Law shall require a person to obtain a permit to remove or to prevent a person from removing topsoil, sand, gravel or subsoil from part of his lands to another part of the same premises when such removal is necessary as an accessory use or is made for the purpose of farming or improving said property.

**I.** As part of the application for special use permit, the applicant shall provide information regarding the measures that will be taken to minimize or prevent water, air and noise pollution; to reduce soil erosion; and to minimize 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 the effects on adjacent property.

## Section 12.5 Sanitation

**A.** The dumping of garbage or rubbish shall only be permitted in locations and under conditions approved by the Town Board and the Cattaraugus County Health Department. Any new or modified facilities for the treatment, storage or disposal of sewage, including excreta, bath, sink and laundry wastes or trade wastes, shall be provided and installed in accordance with the rules, regulations and standards of New York State and 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.

**B.** The casual dumping of clean fill is permitted in the GC, I and A-R zones. Fill may be placed in a flood fringe overzone area only as permitted under the Town of Ellicottville Local Law No. 1-1987 Flood Damage Protection. No fill of any nature is permitted in the Conservation District (C).

(1) A permit must be obtained for the dumping of more than 10 truck loads (approximately 100 cubic yards) of such clean fill within any twelve month period or if the owner of the land or the dumper of such fill expects or should reasonably expect that such dumping will change the character of the land surface in such a way as to adversely affect existing drainage, accessibility, or views of the property or adjacent properties.

(2) In any case, all fill dumped in the Town of Ellicottville shall be leveled within 5 working days after being placed unless otherwise stated in the conditions of a valid Dumping Permit issued pursuant to this Section.

(3) The owner of the land, or his agent, shall apply for a Dumping Permit, if required by the Building Official. The application shall be made on forms available from the Building Official and a Proposed Site Grading Plan sufficient to illustrate the effect of the fill on drainage, accessibility and views shall accompany the application.

**C.** No lot, or other piece of property, other than a legally zoned Automobile Repair Shop, shall contain more than one ungaraged motor vehicle that lacks a current inspection and is not road worthy.

## Section 12.6 Landscaping Regulations

**A. The purpose and intent of this Section is:**

(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) Provide unpaved areas for the absorption of surface waters and to prevent soil erosion.

(5) Reduce the level of carbon dioxide and return pure oxygen to the atmosphere.

**B. Applicability of Landscaping Regulations**

(1) Landscaped area is defined as the area required or permitted under this Section to be devoted to landscaping and environmental improvement, which may include existing and new vegetation, fences and walls for screening and contouring purposes, berms, lighting, street furnishings and ornamental features which are integrated with the vegetation.

(2) The provisions of this Section are applicable to every project that requires discretionary approval from the Planning Board, Zoning Board of Appeals and /or Town Board**,** except for single-family and two-family homes.

## C. General Standards

(1) A Landscape Plan shall be submitted and approved as a part of Special Use Permit, Master Planned Developments and Site Plan Review applications. The Zoning Board of Appeals may require a landscape plan. 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 those existing plant materials that are to be removed, and such other information as may be required by the Planning Board or Zoning Board of Appeals. Such plan shall meet the following standards:

a. All exterior areas of any site not required for parking, accessory structures, or utility structures shall be landscaped. To meet this requirement, existing vegetation may be retained. In order to ensure the survival of trees and other plantings, each interior landscaping area shall be a minimum of 100 square feet, unless otherwise approved by the Planning Board.

b. Landscaping shall be located around the perimeter of parking lots and in the front yard setback. The Planning Board may require landscaping in the interior of large parking lots, and elsewhere on the lot. Foundation plantings may also be required along front walls of buildings.

c. Natural site features and vegetation shall be preserved and integrated into the proposed site development whenever possible. The Town encourages the retention of major stands of vegetation or single major specimens. Retention of existing suitable vegetation will reduce the amount of landscaping that needs to be provided. Individual trees should be a minimum of 6 inches in diameter, measured at breast height (4 1/2 feet from the ground) to be considered for retention. Major clusters of trees, where the individual trees are smaller than this standard shall also be considered for retention. Vegetation to be retained must be protected during construction according to the standards contained in this Section.

d. Landscaping may include deciduous trees, evergreens, shrubs, ground cover, perennial and annual plants, as approved by the appropriate Board.

e. Landscaping may include the use of berms, fencing, and raised or terraced planting beds, as approved by the appropriate Board.

f. The Town encourages the innovative use of planting design and materials. Use of plant materials that provide continual seasonal interest and/or use of native species is encouraged.

g. No plastic or artificial plants shall be used to meet any requirement of this Law.

h. Vegetation shall be appropriate and compatible with soil and growing conditions on the site and within the regional climate. Preferred tree species are those that do not have a high probability of causing damage to public water and sewer lines, having branches that are subject to a high incidence of breakage, or having fruit that is considered a nuisance or high maintenance, as determined by the Planning Board or Zoning Board of Appeals.

(2) Minimum Plant size and spacing at time of planting

a. Deciduous trees shall have a minimum caliper of two (2) inches, measured six inches above the ground.

b. All evergreen trees shall have a minimum height of five feet.

c. Hedges shall be a minimum of 24 inches in height at the time of planting. Spacing of the planting shall depend upon the species. Hedges shall form a solid continuous visual screen at least three feet in height within 2 years of planting.

(3) Ground Treatment

a. The ground area within required landscaping areas which is not dedicated to trees or preservation of existing vegetation shall receive appropriate landscape treatment and shall present a finished appearance and complete coverage upon completion. Sand or pavement shall not be considered appropriate landscape treatment.

b. Ground cover may be planted in lieu of grass in conjunction with planting of trees, shrubs, or hedges. Ground cover shall provide a minimum of 50 percent coverage immediately upon planting and 100 percent coverage within two years after planting.

c. Grass areas shall be planted with species suitable as permanent lawns. Grass areas shall be regularly maintained.

(4) Maintenance

a. All landscaping shall be maintained in a healthy condition throughout the year. Landscaped areas are to be kept neat and free of litter and weeds.

b. The applicant and all succeeding owners are required to maintain the landscaping in perpetuity. If trees on the landscaping plan, including those retained at the time of the initial construction, die, they shall be replaced within six (6) months. Shrubbery or other plantings which die shall also be replaced in kind within six (6) months.

c. The Planning Board may require the applicant to post a performance bond for a term of up to three years following completion of construction to ensure that

replacement of trees and other vegetation occurs. This time period is the most critical for the health of transplanted trees and shrubbery.

d. The applicant and all succeeding owners are required to maintain the landscaping in good and sightly condition. If not, the Planning Board has the authority to revoke the project's site plan, special use permit and/or master planned development approval and occupancy permit.

(5) Protection during construction of existing trees and other vegetation that are to be retained**.**

a. No cables, fences, signs, or ropes shall be attached to any tree to be retained.

b. Trees to be retained shall be enclosed by protective fencing that is sturdy, durable and visible. The size of the area to be protected is the critical root zone.

c. No storage of construction materials, debris, or impervious materials shall be permitted within the critical root zone around trees to be retained.

d. No excavation shall be allowed in the critical root zone around trees to be retained. The minimum critical root zone is the entire area included in a tree's dripline. However, if circumstances warrant, the Planning Board may require a larger critical root zone to be protected during construction.

e. Severe changes in grade affect the survival rate of existing vegetation. Therefore, if the grading plan calls for a finished grade that is 12 inches higher or lower than the existing grade within the critical root zone, that tree(s) shall not be included in the existing vegetation to be retained.

(6) Buffer yards

Where a GC or I zoning district abuts an MD or LD zoning district or abuts a residential use in the HD zoning district, new commercial or industrial development in the GC or I zoning districts shall provide a buffer yard that will provide some visual screening and privacy for the residential use and that will limit noise, dust and other potential impacts from the adjacent use on the residential use. The buffer yard will consist of either (a) a landscaped area, densely planted (or having equivalent natural growth) with shrubs or trees at least four feet high at the time of planting, of a type that will provide for a year round dense screen at least six feet high; or (b) an opaque wall or barrier or uniformly painted fence at least six feet high; or (c) a combination of fencing and landscaping. The buffer yard shall be maintained in good condition at all times. The appropriate type, width and extent of buffer yard shall be determined by the Planning Board (or Zoning Board of Appeals), as part of their review of the project, and shall be shown on the approved landscaping plan.

(7) Screening of Loading Docks, Dumpsters and other service features

Any unenclosed use, such as outdoor storage, loading or service area, trash collection area, litter receptacles or dumpsters, or similar feature, shall provide a fence, screen or landscaping sufficient to obscure such uses from view from abutting properties or from any public right-of-way. If landscaping is used, it shall be of a species and density of planting that will provide a year round screen. Any fencing should generally be a minimum of four feet in height, up to six feet in height, and be substantially light-tight or solid. A wall of similar height may be substituted.

(8) When tree removal is occasioned by any development or land use or change thereof requiring a site plan, Special Use Permit, Master Planned Development and/or variance, the approval thereof shall constitute approval to remove, cut down, kill or otherwise destroy the trees other than those designated to be preserved.

**D. Fencing**

(1) A fence or wall in a GC or I zoning 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.

(2) All fences shall be maintained to be structurally sound and aesthetically pleasing.

## Section 12.7 Home Occupations

Where permitted in Article 3 of this Code, a home occupation shall conform to all the requirements of this section, and any other applicable regulations of this Law. Activities that conform to the requirements for Minor Home Occupations shall be allowed by 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 this Law, prior to commencing operation as a Major Home Occupation.

**A. General Standards**

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

(1) The home occupation is clearly incidental and accessory to the use of the building as a dwelling unit, does not change the character of the dwelling unit, and does not have any exterior evidence of such use, except for one Nameplate sign.

(2) A home occupation may be conducted in the residence, or in an accessory structure or garage.

(3) There is no outdoor storage or display of material or equipment.

(4) The home occupation shall not generate electrical interference, dust, noise, odors, smoke or traffic that disturbs the peace, quiet, and enjoyment of the neighborhood in which it is located.

(5) Customer/client visits to the home occupation shall be limited to the hours from 9 a.m. to 8 p.m.

(6) There shall be no retail sale of merchandise. (However, such sales may be approved as a Home Retail and Service Trade establishment).

(7) 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.

(8) 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. Deliveries shall be permitted between 8 a.m. and 7 p.m.

**B. 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 residents of the dwelling unit in 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/pick ups per day from the delivery vehicles and services listed above.

(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. Offices for authors and composers.
   b. Office of a salesman, sales representative, or manufacturer's representative.
   c. Offices for professionals such as architects, planners, brokers, counselors, clergy, draftspersons and cartographers, engineers, insurance agents, lawyers, real estate agents, accountants, editors, publishers, journalists, psychologists, graphic designers, construction contractors, landscape designers, and surveyors.
   d. Tutoring of not more than one student at a time.
   e. Instruction in a musical instrument for not more than one student at a time.
   f. Studios for artists, sculptors, musicians, photographers and craft persons (such as weaving, jewelry making, pottery, woodworking, taxidermy and similar arts/crafts), provided that retail sales occur off site, except for occasional art tour events. (If retail sales will occur, the artisan may apply for approval as a Home Retail and Service Trade establishment).
   g. Workrooms for tailors, dressmakers, milliners, haberdashers and upholsterers.

h. Direct sale product distribution, such as Avon, Tupperware, etc.
i. Typing, word processing services, data processing, computer programmers, web designers.
j. Cake decorating and baking/cooking/catering for a profit.
k. Beauty parlors and barber shops
l. Pet grooming establishments
m. small appliance repair
n. General contractor
o. Small engine repair (lawn mowers, snowblowers, etc.)

**C. Major Home Occupations**

(1) Any home occupation that exceeds the standards in Section 12.7 (B)(1) shall be considered to be major home occupation. This includes uses that may be listed in Section 12.7(B)(2).

(2) No Major Home Occupation shall be put into operation without first obtaining a Special Use Permit in accordance with the provisions of this Law. 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 residents of the dwelling unit in which the home occupation is located.

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 12. 7(A)(4).

**D. 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 automobile, snowmobile or other vehicular engines
(4) Restaurants and bars
(5) Kennels and veterinary clinics
(6) Adult Uses

## Section 12.8 Adult Uses

### A. Intent and Purpose

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, particularly when located in close proximity to residential areas and recreational commercial areas. 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 as a primarily residential and family oriented community as well as a recreational destination. 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 residential community 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 Permitted Use

No adult use shall be established except upon the receipt of a Special Use approval from the Planning Board in accordance with Article 6 of this Law and the provisions herein. Adult uses shall only be allowed in the district(s) as identified on the Land Use Tables of this Law.

### C. Regulations

An adult use shall conform to the following requirements:

**(1)** Location and Separation Distances

a. No adult use shall be located within 750 feet of any building currently in residential use, measured in a straight line from exterior building wall to closest exterior building wall**.**

b. No adult use shall be located within 250 feet of the side or rear property lines.

c. No adult use shall be located within 500 feet of the right of way of any Town, County, New York State or US roadway**.**

d. No adult use shall be located within five hundred feet of any church, school, BOCES Center, day care center, park or playground, civic facility, library, cemetery, historic resource, or recreation area (ski resort, snow tubing facility, golf course or similar commercial recreational facility that minors may use), measured

in a straight line from the property line on which the sensitive use is located to the nearest property line of the parcel on which the adult use is proposed to be located**.**

e. No adult use shall be located within one thousand feet of another adult use, measured from exterior building wall to exterior building wall.

f. No adult use shall be located in any building that is used in whole or in part for residential uses. No residential use shall be established in any building that contains an adult use.

g. No more than one adult use shall be located on any lot.

h. An adult use shall not be permitted as an accessory use**.**

**(2)** Standards

a. All building openings, including doors and windows shall be located, covered or screened in such a manner as to prevent a view into the establishment from any public road or street, sidewalk or parking area. Such screening shall be done in an aesthetically appropriate manner.

b. No merchandise or pictures of the products or entertainment on the premises shall be displayed in window areas where they can be viewed from a public road or street or sidewalk adjacent to the establishment.

c. As a condition of approval of any adult use, there shall be a restriction that no person under the age of eighteen years shall be permitted into or on the premises.

d. No loudspeakers or sound equipment shall be used by the adult uses that can be heard by the public from outside the establishment.

e. All adult uses shall be conducted in an enclosed building.

f. Adequate screening and buffering, to the satisfaction of the Planning Board, shall be provided, as necessary, to minimize the visual impact on adjacent sites of any structure containing an adult use. This may be accomplished by landscaping, fencing or other means approved by the Planning Board.

g. If any adult use contains one or more Adult Viewing Booths, the booths shall be constructed in accordance with the standards in Section 12-9, Private Viewing Booths.

**(3)** Signage

As a condition of approval of any adult use, there shall be a restriction that there shall be no outdoor sign, display or advertising of any kind other than one identification sign

limited to only the name of the establishment and one sign giving notice that the premises are off limits to minors. Such signs shall be reviewed by the Planning Board in conjunction with the Special Use application and shall conform to all signage requirements of this Law as per Section 12-1 Signs.

## Section 12.9 Private Viewing Booths

Where permitted as a special permitted use, or as part of a commercial use that has a valid special use permit issued pursuant to Article 6 of this Law, all private viewing booths shall conform to the following standards:

**A.** Each booth shall be totally accessible to and from aisles and public areas of the establishment. Access to a booth shall be unrestricted by doors, locks, or other control-type devices.

**B.** Each booth shall have at least one side totally open to a public, lighted aisle so that there is an unobstructed view at all times of anyone occupying the booth. Visibility shall not be blocked by doors, curtains, partitions, drapes or any other obstruction.

**C.** Each booth shall be separated from adjacent booths and any nonpublic areas of the establishment by a solid wall, which shall extend from the floor to the ceiling.

## Section 12.10 Property in Excess of 25% in Slope

Construction of any public or private roadways, access, or streets on slopes in excess of 25% shall be discouraged. In circumstances that are compelling, the Planning Board may approve construction of such roadways, for a distance not to exceed 125 feet, if it is necessary to cross an area of land with a slope in excess of 25% in order to access an otherwise inaccessible area of land which has a slope less than 25%. In no case shall a structure (residential or non-residential) be constructed on ground which has a slope in excess of 25% if the roadway which is serving the structure is on ground in excess of 20% in slope.

Where a lot has an average slope in excess of 25 %, the maximum density for that lot shall be calculated at the density of one unit per three acres.

Land in subdivisions that have been approved and recorded as of April 1990 that exceed 25% in slope shall be exempt from this requirement and are to be considered to be "grandfathered."

## Section 12.11 Accessory Apartments

**A.** Where permitted in Article 3 of this Law, an accessory apartment may be allowed as an accessory use to a lot containing one single family home.

**B.** All accessory apartments shall comply with the following standards.

(1) There shall be no more than one (1) accessory apartment per lot.

(2) The applicant shall demonstrate that the existing sewage disposal system and water supply are adequate to serve the accessory apartment.

(3) The applicant shall show that there is adequate off-street parking for the occupants of the accessory apartment, in addition to the parking required for the primary residence.

(4) An accessory apartment may be located in a freestanding building, in a garage, or in an addition to the principal dwelling on the site. If an accessory apartment is located in the principal dwelling unit, the entry to such unit and its design shall be such that, to the maximum degree feasible, the appearance of the building will remain that of a single family dwelling.

(5) The minimum gross floor area for an accessory apartment shall be three hundred (300) square feet. The accessory apartment shall be no larger than 1200 square feet in size.

(6) Mobile homes and/or manufactured homes shall not be allowed as accessory apartments.

(7) Legal title to the accessory apartment and single-family unit shall be held in the same name.

## Section 12.12 Utility-scale Wind Energy Conversion Systems (WECS)

### A. Intent and Purpose

The Town of Ellicottville 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 Utility-scale 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.

### B. Application Process

(1) Prior to construction of any utility-scale WECS, the project proponent shall first obtain Special Use Permit and Site Plan Approval from the Town of Ellicottville Planning Board and a Building Permit from the Town's Building Official.

(2) Initial Application Materials

In order to ensure Planning Board input into the parameters of the studies that are required in Subsection 12.12(B)(3), there will be a two-stage application process. Initially, in addition to the application requirements of Article 6 and Article 7 of this Law, all applications for a utility-scale 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. Full SEQRA Environmental Assessment Form.

e. 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.

(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. 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. Erosion and Sediment Control Plan (A SWPPP will meet this requirement).

e. Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each utility-scale 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, 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 include.

h. Noise analysis. A Noise Analysis shall be furnished which shall include the following:

(i) A description and map 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 description and map of the noise sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities, within 1500 feet of the proposed facilities.
(iii) A survey and report prepared by a qualified professional, that analyzes the preexisting ambient sound level (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction; and analyses at affected sensitive noise receptors located within 1500 feet of the turbine, as identified by the Planning Board.

(iv) A description and map showing the potential noise impacts, including estimates of expected noise impacts from both construction and operation, and estimates of expected noise levels at sensitive receptor locations;
(v) 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 for sensitive receptors consistent with the requirements of this Law.
(vi) Manufacturers' noise design and field testing data, both audible (dB(A), and low frequency (deep bass vibration), for all proposed structures.

i. A geotechnical report shall be furnished which shall at a minimum include 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. Engineer's report, prepared by a Professional Engineer licensed in New York State, that provides information regarding the following potential risks. The results of the engineer's report shall be used to determine the adequacy of setbacks from the property line to mitigate any effects from potential ice throw, tower failure, or blade throw.

(i) Ice throw calculations: A report that calculates the maximum distance that ice from the turbine blades could be thrown**,** and the potential risk assessment for inhabitants and structures. (The basis of the calculation and all assumptions must be disclosed.)
(ii) Blade throw calculations: A report that calculates the maximum distance that pieces of the turbine blades could be thrown, and the potential risk assessment for inhabitants and structures. (The basis of the calculation and all assumptions must be disclosed.)
(iii) Catastrophic tower failure: A report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand, and the potential risk assessment for inhabitants and structures (including all assumptions).
(iv) Certification by a registered New York State Professional Engineer that the tower's design is sufficient to withstand wind loading requirements for structures or as established by the New York State Building Code.

k. Lighting plan: The applicant shall submit a 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 is 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 NYSDEC 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 notification: Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.

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 are necessary for a particular proposed project.

(4) SEQR Review

Pursuant to Section 617.13 of NY State Environmental Quality Review Regulations, 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.

## C. Criteria for Approval

In addition to the criteria contained in Article 6 and Article 7 of this Law, the Planning Board shall use the following criteria to evaluate all Utility-scale Wind Energy Conversion Systems:

(1) Setbacks

All utility-scale 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 structure, including to the tip of the blade, excluding adjoining lot lines where both lots are part of the proposed project**.**

b. All wind turbines and towers shall be set back a minimum of 1000 feet from the boundaries of any MD or LD Zoning District.

c. All wind turbines and towers shall be set back a minimum of 1000 feet from any residence that exists at the time that an application for a WECS is made to the Town. 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 Building Inspector, even if construction is not yet completed and the residence is not yet occupied.

d. All wind turbines and towers shall be set back from all structures and buildings**,** other than 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 tower**,** including to the tip of the blade. 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 structure, including to the tip of the blade.

(2) Noise

A Utility-scale 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 12.12 (B).

a. Audible noise standards:

(i) Audible noise due to wind turbine operations shall not exceed 45 dB(A) for more than five (5) minutes out of any one-hour time period or exceed 50 dB(A) for any time period, at the boundary of the proposed project site.

(ii) The sound level from the operation of a Utility-scale WECS shall not increase by more than 3 dB(A) the nighttime or daytime ambient sound level at any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and similar facilities within 1500 feet of the turbine.

b. Low frequency noise: A utility-scale wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.

c. Noise setbacks: The Planning Board may impose a noise setback that exceeds the other setbacks set out in this section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.

d. Within one year of commencement of operation, the project proponent shall submit a noise study of operational conditions to ensure that the project is in compliance with the standards of this section. The study shall be based on receptor points identified during the application review process. In addition to this noise study, the Planning Board may require periodic additional noise studies.

(3) Noise and Setback Easements

In the event that a Utility-scale 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 12.12(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 Law, 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 Utility-scale 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 utility-scale 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 utility-scale 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 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. Climbability. 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.

(9) Impact on wildlife species and habitat

Development and operation of a utility-scale 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 Ellicottville 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 Ellicottville Planning Board during SEQRA review. The impact of a utility-scale 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 utility-scale 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 Ellicottville 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 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**.**

**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 utility-scale 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 Counsel to the Town 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 safely 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 Counsel to the Town 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.

(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 Special Use 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 Building Official 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 Special Use 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 Special Use Permit.

(5) Certification of seismic design: The applicant shall provide post-construction certification from a licensed professional engineer registered in the State of New York that the design and construction protects against anticipated seismic hazards.

**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 Building Inspector that the wind turbine, tower or pole may have sustained structural damage. A

copy of the inspection report shall be submitted to the Town's Building Inspector. 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 Code 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 Law, the owner/operator shall remedy the situation within 90 days after written notice from the Zoning Official**.** The Zoning Official or Town Board may extend this period.

(3) Upon notice from the Zoning Official or Town Board that the WECS is not repaired or made operational or brought into permit compliance after said notice pursuant to Section 12.12J(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 Utility-scale WECS remains non-functional or inoperative for a continuous period of one (1) year, the permitee shall remove the WECS at his/her own expense and restore the site, in accordance with the approved Decommissioning and Site Restoration Plan. A utility-scale 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 permit holder for the costs over and above the amount of the bond.

**L. 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.

Prior to issuing a special use permit for a utility-scale WECS, the Planning Board shall make all of the following findings:

(1) The proposed utility-scale WECS project is consistent with the Town of Ellicottville Comprehensive Plan.
(2) The proposed utility-scale WECS project will not unreasonably interfere with the orderly land use and development plans of the Town of Ellicottville.
(3) That the benefits to the applicant and the public of the proposed utility-scale WECS project will exceed any burdens to the Town and residents therein.
(4) That the proposed utility-scale WECS project will not be detrimental to the public health, safety or welfare of the community.
(5) That the proposed utility-scale WECS project complies with all required provisions of the Town's Law, or will comply with those requirements based on conditions that may be attached to any approval, unless variances have been properly granted by the Town of Ellicottville Zoning Board of Appeals.

**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. Such amendment shall be subject to all the requirements of this section.

**N. NYS Real Property Tax Law Exemption**

The Town of Ellicottville reserves the right to, by Local Law, provide that no exemption pursuant to the provisions of the New York State Real Property Tax Law (RPTL) Section

487 shall be applicable within its jurisdiction and reserves the right to require that the project sponsor enter into a host community agreement with the Town.

## Section 12.13 Small-scale Wind Energy Conversion Systems (WECS

### A. Intent and Purpose

The Town of Ellicottville 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 Small-scale 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 Article is to encourage the development of small-scale 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

A zoning permit and building permit shall be required for all small-scale WECS. Application shall be made to the Town's Zoning Official.

(1) All applications for a small-scale 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 Building 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. The applicant shall contact the FAA to determine whether or not the planned site location infringes upon the runway approach location of any local airports or airstrips.
l. Such additional information as may be reasonably requested by the Zoning Official for a complete understanding of the proposed project.

(2) The Zoning Official shall evaluate all applications. The Zoning Official is authorized to issue a zoning permit for all small-scale WECS that meet the following standards. Upon issuance of a zoning permit, the applicant shall be required to obtain a building permit prior to installation. In order to be approved by the Zoning Official, all small-scale WECS must conform to all of the following standards:

a. The WECS shall be located on a lot that is a minimum of one acre in size.
b. The WECS shall not be located on any ridgeline designated as significant on the Town of Ellicottville Comprehensive Plan Map.
c. Only one small-scale WECS per lot shall be permitted
d. The turbine, measured to the apex of the blade, is not taller than 150 feet.
e. The maximum turbine output, as shown by the manufacturer's rated capacity, shall not exceed 10Kw/hour
f. The small-scale WECS shall be set back a minimum of 1.5 times the total height of the WECS from:
   (i) Any residence in existence at the time the application is made, except for the residence on the owner's lot.
   (ii) Property lines of the site on which the structure is located.
   (iii) The boundary of any MD or LD Zoning District
   (iv) The right of way of public roads
g. In order to reduce visual impact, 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.
h. 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.

i. Signage: No advertising sign or logo shall be placed or painted on any turbine or tower. However, a small manufacturer's logo may be placed on a ground level structure in an unobtrusive manner.

j. Safety and security requirements: All small-scale WECS shall adhere to the following safety and security requirements:

(i) 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.

(ii) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical code.

(iii) 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.

(iv) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.

(v) Climbability: Wind turbine towers shall not be climbable up to 15 feet above ground level and/or other appropriate method of access control shall be provided.

(vi) 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. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.

k. The site drainage and erosion control plan is deemed adequate by the Town Engineer

**C. Permit Issued by the Planning Board**

Pursuant to the procedures and standards contained in this sub-section, the Planning Board may issue a special use permit to allow a small scale WECS where the maximum turbine output, as shown by the manufacturer's rated capacity, exceeds 10Kw/hour, but does not exceed 100Kw/hour.

(1) Application Requirements

An applicant for a small-scale WECS that has an output exceeding 10Kw/hour shall apply to the Planning Board for a Special Use permit, following the procedures outlined in Article 6 of this Law. Application materials shall include:

a. All the information listed in Section 12.13 B(2), above
b. Required application information and materials contained in Articles 6 and 7 of this Law.
c. Full Environmental Assessment Form
d. Any additional information that may reasonably required by the Planning Board for an understanding of the project

(2) Application Review

The Planning Board shall review the application following the procedures contained in Article 6, Special Use Permit, of this Code.

(3) Standards for small-scale WECS

a. Minimum Lot Size: A small-scale WECS shall be located on a lot that is a minimum of one acre in size.
b. Significant Ridgelines: A WECS shall not be located on any ridgeline designated as significant on the Town of Ellicottville Comprehensive Plan Map.
c. Only one small-scale WECS shall be allowed per lot. The system shall be primarily used to reduce the on-site consumption of electricity.
d. Height: The turbine, measured to the apex of the blade, is not taller than 150 feet.
e. Capacity: The maximum turbine output, as shown by the manufacturer's rated capacity shall not exceed 100Kw/hour.
f. Setbacks: The small-scale WECS shall be set back a minimum of 1.5 times the total height of the WECS from:
   (i) Any residence in existence at the time the application is made, except for the residence on the owner's lot.
   (ii) Property lines of the site on which the structure is located.
   (iii) The boundary of any MD or LD Zoning District
   (iv) The right of way of public roads

g. Visual Impact: In order to reduce visual impact 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.
h. 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).

i. 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.

j. Safety and security requirements. All small-scale WECSs shall adhere to the following safety and security requirements

(i) 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.

(ii) Grounding: All structures which may be charged with lightning shall be grounded according to applicable electrical code.

(iii) 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.

(iv) Ground clearance: The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 30 feet.

(v) Climbability: Wind turbine towers shall not be climbable up to 15 feet above ground level and/or other appropriate method of access control shall be provided.

(vi) 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. The minimum set back for the guy wire anchors shall be 10 feet from the property boundary.

(vii) 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.

k. 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 small-scale 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.

l. Noise Standard

(i) Audible noise standard: Wind turbine operations shall not cause the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than five (5) minutes out of any one-hour time period or to exceed 50 dB(A) for any time period. If the ambient noise level in the vicinity of the WECS already exceeds this standard, the operation of the WECS shall not increase the nighttime or daytime ambient sound level at an adjacent residence by more than 3 dB(A).

(ii) Low frequency noise: A small-scale wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.

m. Interference with television, microwave and radio reception: The 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.

n. Erosion Control: Prior to granting a special use Permit for a small-scale WECS, the Planning Board shall determine that the Erosion and Sedimentation Control Plan is adequate

(4) Planning Board Action on Application

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 the small-scale WECS prior to installation.

Prior to issuing a special use permit for a small-scale WECS, the Planning Board shall make all of the following findings:

a. The proposed WECS project is consistent with the Town of Ellicottville Comprehensive Plan.
b. The proposed WECS project will not unreasonably interfere with the orderly land use and development plans of the Town of Ellicottville.
c. That the proposed WECS project will not be detrimental to the public health, safety or welfare of the community.
d. That the proposed WECS project complies with all required provisions of the Town's Law, including the criteria and standards of Articles 6 and 7, and the

standards contained in Section 12-13(C)(3), or will comply with those requirements based on conditions that may be attached to any approval, unless variances have been properly granted by the Town of Ellicottville Zoning Board of Appeals.

(5) Amendment to approved Special Use Permit

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

(6) Permit Revocation

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.

**D. Abandonment of Use**

(1) All small-scale WECSs shall be maintained in good condition and in accordance with all requirements of this Law.

(2) Any WECS which is not used for twelve (12) consecutive months shall be deemed abandoned and shall be dismantled and removed from the property at the owner's expense. The Town reserves the right to dismantle the structure and to charge back the cost of this removal to the property owner. If unpaid, this cost will be added as a charge to the tax levy of the property.

**E. Assessment**

A small-scale wind energy conversion system shall be subject to assessment by the Town of Ellicottville.

## Section 12.14 Telecommunications Facilities

**A. Intent and Purpose**

(1) The Federal Telecommunications Act ("the Act") was signed into law in February 1996. The passage of the Act, the increased sale of airwave rights and issuance of licenses by the FCC, the increased demand for wireless communication services, and new technology have led to a significant increase in the demand for telecommunications facilities within New York State. The Town of Ellicottville has significant concerns over the location of telecommunication facilities within the Town. The 1996 Act preserves the authority of local governments over reasonable non-discriminatory decisions regarding the placement, construction, and modification of

telecommunications facilities. It is the Town's intent, through this section of the Law, to use its local authority over telecommunications facilities as provided for by the Federal Telecommunications Act of 1996.

(2) The purpose of this Section is to set forth a means by which the Town can ensure that the installation of telecommunications facilities proceeds in a fashion that minimizes any adverse impacts while maximizing services and benefits to the community. The Town wants to accommodate the need for telecommunications facilities while regulating their location and number, minimize adverse visual effects through proper design, siting and screening, avoid potential physical damage to adjacent properties, and encourage joint use of such facilities.

(3) In order to accomplish the purposes enumerated above, the Town encourages the placement of telecommunications antennas on suitable existing structures.

(4) Telecommunications facilities may be permitted with a grant of special use permit, as permitted in Article 3 of this Code. However, the Town recognizes that circumstances may warrant the placement of a telecommunications facility in another area of the community, which will necessitate an application for a variance.

**B. Review Authority**

(1) The Planning Board is hereby authorized to review and approve, or approve with modifications or disapprove special use permits for telecommunications towers, antennas, and facilities pursuant to this Law. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed telecommunications facility, including the use of camouflage of the tower structure and/or antenna to reduce visual impact.

(2) Except as provided below, no telecommunications tower, antenna or facility shall hereafter be erected, moved, reconstructed, changed or altered and no existing structure shall be modified to serve as a telecommunication facility, except after obtaining a special use permit in conformity with this Law.

(3) No building permit shall be issued until the applicant provides proof that space on the facility has been leased or will be operated by a provider licensed by the FCC to provide service in the area.

**C. Submission Requirements**

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

(1) Special Use Permit Application

(2) Site Plan Application

(3) Project Participants

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

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

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

(4) Site Description

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

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

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

(5) Site Plan

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

a. Scale, north arrow, date and name of preparer
b. Project site boundaries (if part of a larger parcel, include a map of the larger parcel and the location of the area to be acquired or leased for the project). A copy of an up-to-date property survey must be provided.

c. Abutting property owners' names and addresses
d. All bodies of water, wetlands, permanent or intermittent streams, floodplains
e. Existing and proposed topographic contours at two-foot intervals in and within 200 feet of all proposed areas to be disturbed.
f. All existing or proposed structures, buildings, towers, antennas, utility, roads, driveways, guy wires and anchors, parking.
g. The location and use of all structures on any adjacent property within fifty feet of the property lines, together with the distance of these structures to any proposed tower.
h. Existing vegetation cover types and tree lines
i. The proposed limits of vegetation disturbance and/or clearing related to the proposed construction of the site access, tower and accessory structures
j. All trees 4 inches or greater in size (diameter at breast height, DBH) to be removed.
k. All proposed planting and landscaping.
l. All existing and proposed drainage and erosion control and stormwater management facilities.
m. The location, nature and extent of any proposed fencing and/or screening
n. The location and nature of proposed utility easements, if any.

(6) Construction details

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

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

(7) Site access, construction and operation

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

(8) Telecommunications data

a. Describe the facility and technical, economic and other reasons for the facility and tower design.

b. Provide "Before" and "After" propagation studies prepared by a qualified professional engineer, licensed in the state of New York, demonstrating existing signal coverage, contrasted with the proposed signal coverage resulting from the proposed telecommunications facility.

c. Provide a "Search Ring" prepared by a qualified professional engineer, licensed in the state of New York, and overlaid on an appropriate background map demonstrating the area within which the telecommunications facility needs to be located in order to provide signal strength and coverage (this meaning adequate coverage as opposed to desired coverage) to the target cell. The applicant must be prepared to explain to the Planning Board why it selected the proposed site, discuss the availability or lack of availability of a suitable structure within the search ring which would have allowed for a co-located antenna(s), and to what extent the applicant explored locating the proposed tower in a more intensive use district.

d. Describe how many and what kinds of antennas are proposed.

e. Describe how many and what kinds of antennas are possible on the tower.

f. Demonstrate that the site can contain on-site substantially all ice-fall or debris from tower failure.

g. Describe the fall zone of the proposed tower.

h. For any telecommunications facility that will be placed on an existing structure or that will use an existing telecommunications tower, provide a letter certifying that the proposed shared use will not diminish the structural integrity and safety of the existing structure or existing telecommunications tower, and explaining what modifications, if any, will be required in order to certify to the above.

(9) A letter of intent committing the facility owner to negotiate in good faith for shared use by third parties in the future. This letter shall be filed with the Building Official prior to issuance of a building permit (assuming the telecommunications facility is approved). Failure to abide by the conditions outlined in the letter may be grounds for revocation of the special use permit. This letter shall commit the facility owner and his successors in interest to:

a. Respond in a timely comprehensive manner to a request for information from a potential shared-use applicant.
b. Negotiate in good faith for shared-use by third parties.
c. Allowed shared use if an applicant agrees in writing to share charges.
d. Make no more than a reasonable charge for shared use, based on generally accepted accounting principles. The charge may include, but is not limited to, a pro-rate share of the cost, site design, construction and maintenance, financing, return of equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.

(10) Other regulatory permits and approvals

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

a. A copy of Applicant's Federal Communications Commission (FCC) license
b. A letter from the Federal Aviation Administration (FAA), stating any requirements that they may have (or lack of any requirements, if none are necessary).
c. The applicant shall submit to the Building Official copies of all licenses and permits required by other agencies with jurisdiction over the design, construction, location and operation of its Telecommunications Facility and applicant shall maintain such licenses and permits and provide evidence to the Building Official of renewal or extension thereof when granted.

(11) Environmental Review and Visual Impact Analysis

All applications for telecommunications facilities shall require a Full Environmental Assessment Form (EAF) and the Visual Addendum to the EAF. The Planning Board may require submittal of a more detailed visual analysis based on the results of the Visual Addendum which may include a map showing locations from which the facility may be seen, line – of – sight drawings, visual simulations of "before and after" views from viewpoints selected by the Planning Board, assessment of alternative tower designs and color schemes and assessment of the visual impact of the tower base, guy wires, accessory buildings and overhead utility lines from abutting properties and roads.

(12) All required fees.

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

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

The Town of Ellicottville, at the expense of the applicant, may employ its own consultant to review the findings and conclusions of safety analysis, visual analysis, structural inspection or other pertinent information provided by the applicant.

**D. Findings**

In order to grant a special use permit for a telecommunications facility, the Planning Board shall find that such facility conforms to all the criteria contained in this sub-section, in addition to the criteria contained in Article 6, Special Use Permits, of this Law:

(1) Is necessary to provide adequate service to locations that the applicant is not able to serve with existing facilities.

(2) Conforms to all applicable regulations promulgated by the Federal Communications Commission, Federal Aviation Administration and other federal agencies.

(3) Is designed and constructed in a manner which minimizes visual impact to the maximum extent practical.

(4) Is the most appropriate site among those available within the technically feasible area for the location of a telecommunications facility.

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

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

**E. Co-location**

(1) The shared use of existing telecommunications towers or other structures shall be preferred to the construction of new facilities. Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to co-locate within an existing telecommunication facility or upon an existing structure within a reasonable distance of the site. The applicant must demonstrate that the proposed telecommunication facility cannot be accommodated on existing telecommunication facilities due to one or more of the following reasons:

a. The planned equipment would exceed the structural capacity of existing and approved telecommunication facilities or other structures, considering existing and planned use for those facilities.

b. The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented.

c. Existing or approved telecommunications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably.

d. Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures.

e. The property owner or owner of the existing telecommunication facility or other structure refuses to allow such co-location or requests an unreasonably high fee for such co-location compared to current industry rates.

(2) The applicant must submit a copy of its policy regarding co-location on the proposed tower with other potential future applicants. Such policy should allow co-location on the proposed tower under the following conditions:

a. The new antenna(s) and equipment do not exceed structural loading requirements, interfere with space used or planned to be used by the applicant, nor pose any technical or radio frequency interference with existing equipment;

b. The party desiring to co-locate pays the applicant an appropriate and reasonable sum to co-locate;

c. The party desiring to co-locate has a similar policy of co-location for the applicant.

**F. Visibility and Aesthetics**

(1) Telecommunication Facilities shall be located and buffered to the maximum extent which is practical and technologically feasible to help insure compatibility with surrounding land uses. In order to minimize any adverse aesthetic effect on neighboring properties to the extent possible, the Planning Board may impose reasonable conditions on the applicant. These conditions may include specially designed towers, additional screening, greater setbacks, and improved landscaping to address aesthetic concerns.

(2) The applicant shall demonstrate that the proposed height for the tower and antenna(s) is the minimum necessary to function satisfactorily. No tower or antenna(s) that is taller than this minimum height shall be approved. In all cases, the maximum height for telecommunication towers permitted under this section, including any antennas or other devices extending above the tower, measured from the ground surface, shall be 150 feet.

(3) Towers shall be a galvanized finish or painted gray above the surrounding treeline and painted gray, green, black or similar colors designed to blend into the natural surroundings below the surrounding treeline, unless other standards are required by the FAA. Towers should be designed and sited so as to avoid, whenever possible, application of FAA lighting and painting requirements. Accessory uses shall maximize use of building materials, colors, and textures designed to blend with the surrounding area.

(4) The project shall be designed to blend with the natural and /or man-made surroundings to the maximum extent practicable.

(5) Structures offering slender silhouettes (i.e. monopoles or guyed tower) may be preferable to freestanding lattice structures except where such lattice structures offer capacity for future shared use. The Planning Board may consider the type of structure being proposed, the surrounding area, and the potential for its **scientifically verifiable** effects on migratory and year-round bird populations.

(6) No outdoor storage of equipment and/or vehicles shall be permitted on the facility site.

(7) If co-location or the use of existing structures is not feasible, the Planning Board may require the applicant to show that he has made good faith efforts to construct the proposed new tower near existing towers in order to consolidate visual disturbances.

**G. Lighting**

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

**H. Fall Zones**

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

**I. Setbacks**

(1) As a minimum requirement, all Telecommunication Facilities shall comply with all existing setbacks within the zoning district in which they are located. Setbacks shall apply to all tower parts, including guy wire anchors and to any accessory facilities. Additional setbacks may be required by the Planning Board to contain on-site substantially all icefall or debris from tower failure and/or to preserve the privacy of adjoining property.

(2) A tower setback may be reduced in the sole discretion of the Planning Board to allow the integration of the tower into an existing structure, such as a church steeple, light pole or similar structure.

**J. Vegetation and Screening**

(1) Existing on-site vegetation shall be preserved to the maximum extent possible, and no cutting of trees exceeding four inches in diameter (measured at breast height) shall take place prior to approval of the special use permit. Clear-cutting of all trees in a single contiguous area shall be minimized to the extent possible.

(2) The Planning Board may require appropriate vegetative buffering around the fences of the tower base area, accessory structures and the anchor points of guyed towers to

buffer their view from neighboring residences, recreation areas, waterways, historic or scenic areas, other properties or public roads.

**K. Access and Parking**

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

**L. Signage**

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

**M. Security**

(1) Towers, anchor points around guyed towers, and accessory structures shall each be surrounded by fencing not less than eight (8) feet in height or otherwise sufficiently protected from trespassing or vandalism.

(2) There shall be no permanent climbing pegs within fifteen feet of the ground.

(3) Motion-activated or staff-activated security lighting around the base of a tower or accessory structure entrance may be provided if such lighting does not project off the site.

**N. Engineering Standards**

(1) All telecommunication facilities shall be built, operated and maintained to acceptable industry standards, including but not limited to, the most recent applicable standards of the Institute of Electric and Electronic Engineers (IEEE) and the American National Standards Institute (ANSI).

(2) All towers shall be designed by a qualified professional engineer, licensed in the state of New York. Each application must contain a site plan for the facility prepared by said engineer and containing his/her signature.

(3) Telecommunications facilities may operate only at Federal Communications Commission (FCC) designated frequencies and power levels and/or Environmental

Protection Agency (EPA) technical exposure limits. The Planning Board may require that the applicant provide competent documentation to support that maximum allowable frequencies, power levels and exposure limits for radiation will not be exceeded.

(4) Each application for installation of an antenna shall include a certified statement prepared by a qualified professional engineer, licensed in the state of New York, that states that the installation of the antenna, including reception and transmission functions, will not interfere with the radio or television service enjoyed by adjacent residential and non-residential properties or with public safety telecommunications.

(5) Every facility shall be inspected, at the owners expense, at least every two (2) years for structural integrity by a qualified professional engineer, who is licensed to practice in the State of New York. A copy of the inspection report shall be promptly submitted to the Building Official. The structural inspection report shall describe the structural integrity of the facility, maintenance issues and repairs needed or made, if any. In the event that the structural inspections indicate structural deficiencies, then the deficiencies must be remedied within the time reasonably set by the Building Official. Failure to make the repairs may result in revocation of the special use permit.

**O. Abandonment and Removal**

(1) All abandoned, obsolete or unused telecommunication facilities/towers shall be removed within twelve (12) months of cessation of use.

(2) The owner of the telecommunication facility shall annually file a declaration with the Planning Board as to the continuing operation of every facility installed subject to this Law.

(3) At the time of submission of the application for a telecommunication facility the applicant shall submit an agreement to remove all antennas, driveways, structures, buildings, equipment sheds, lighting, utilities, fencing, gates, accessory equipment or structures, as well as any tower used as a telecommunication facility if such facility becomes technologically obsolete or ceases to perform its originally intended function for more than twelve consecutive months. Upon removal, the land shall be restored to its previous condition, including but not limited to the seeding of exposed soils.

**P. Revocation of Special Use Permit**

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

**Q. Expiration of Special Use Permit**

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

## Section 12.15 Significant Ridgeline Overlay District

### A. Purpose

The Town of Ellicottville is in a unique geographic location where ridgelines, hills, and valleys constitute significant natural topographic features. Ridgelines form a backdrop to the community, contributing to the rural character that is prized by residents and visitors alike. Ridgelines are also important to the economy of the area, which is largely based on tourism, primarily ski resorts. Because of the importance of ridgelines to the community, the Comprehensive Plan has designated some ridgelines as Significant Ridgelines and has recommended their protection.

The purpose of this section of this Code is to implement the recommended policies to preserve those ridgelines that have been designated as significant.

### B. Applicability

This section applies to all ridgelines designated on the Town of Ellicottville Comprehensive Plan map as "Significant Ridgelines." This area is hereby designated as the Significant Ridgeline Overlay Zoning District. This District consists of the area from the peak of the ridge to and including the area below the peak for a distance of 100 feet on both sides of the ridge. The extent of the District is approximated on the Zoning Map.

### C. Development Standards

Any development that would otherwise require a discretionary approval by the Planning Board or Zoning Board of Appeals shall comply with the following development standards. However, the Planning Board or Zoning Board of Appeals may find that these regulations are not appropriate for some types of Commercial Recreation development, such as ski areas and ancillary activities, which by their very nature, are required to be sited, in part, on ridgelines in order to be functional.

(1) Visibility

To the maximum extent feasible, structures shall be sited to encourage preservation of the undeveloped character of the designated Significant Ridgelines and to preserve unobstructed public views of the top of any Significant Ridgeline from public viewing locations which are listed in Appendix A of the Town of Ellicottville Comprehensive Plan.

Grading to substantially re-shape Significant Ridgelines is prohibited.

(2) Siting

All structures should be sited away from ridgelines, to the maximum extent feasible. Whenever possible, structures should be sited at lower elevations and close to existing roads. Structures shall be sited such that the top of the structure is not visible on the horizon above the tree line or the ridgeline, whichever is higher.

(3) Design

a. Structures should be designed to blend with their natural surroundings, in terms of height, and building color and materials.

b. Buildings should step up or step down the hillside slope. Buildings shall use architectural grading and landscaping elements that serve to integrate the structure with the land on which it is constructed. Foundations and floor plans should be designed with multi-levels to change elevation with the natural site contours.

c. Roof planes should be angled in the direction of the natural slope.

d. Building colors that are used should blend with the natural surrounding terrain.

e. If foundation walls are required, the area around the foundation should be back filled. If the underside of the building is exposed, landscape screening for the underside of the structure is required.

f. Site lighting should be arranged so that it is not visually intrusive when viewed from the designated public viewing locations**.**

(4) Screening

a. Preservation of existing mature vegetation is encouraged to the maximum extent feasible. Preservation of some individual major trees or other vegetation may be required to provide screening of the structure. The planting of new trees and other vegetation to screen proposed buildings may also be required.

b. Tree harvesting shall be conducted in accordance with best forestry management practices. Clear cutting of all trees in a single contiguous area exceeding 40,000 square feet is discouraged, unless necessary to contain pests and/or disease or is otherwise warranted by best forestry management practices.

c. Site clearance for permitted building and construction activity shall be limited to a maximum of 15,000 contiguous square feet, not including the driveway.

(5) Clustering of Development

Where development of a large parcel is proposed, development shall be sited away from the top of the significant ridgeline. Development may be clustered in other, less sensitive, parts of the site. In this case, the protected ridgeline will be required to be placed in a conservation easement, or similar legal protection, to protect it from future development, since the development potential of the ridgeline has been used elsewhere on the site.

## Section 12.16 Hillside Development

### A. Purpose

Development on hillsides poses special problems which may result in potential hazards to the health, safety and welfare of the residents of the Town of Ellicottville. Hillside development may cause an increase in erosion. Steep road grades may result in difficult access for emergency vehicles. Development on steep slopes can also be aesthetically unsightly, due to areas of large cut and fill and the necessity for large retaining walls, which conflict with the natural, vegetated character of the community. Furthermore, large areas of cut and fill may be unstable unless suitably engineered. For all these reasons, development on hillsides requires special regulation to prevent these adverse impacts.

### B. Applicability

These regulations shall apply to any application for Site Plan Review, Master Planned Development, Special Use Permit, and/or Subdivision.

### C. Grading standards

(1) The site shall be laid out to promote the efficient use of land and to minimize disturbance to the natural grade and existing mature vegetation.

(2) Site grading for new construction shall blend in with the surrounding grades. The finished grade shall not be significantly higher or lower than the surrounding area, and shall not appear unnatural. Grading should relate to the natural contour of the land. Graded areas shall be rounded off in a natural manner, so that there are no sharp angles at the top and toe of areas of cut and fill.

(3) Retaining Walls

a. The use of retaining walls shall be minimized to the maximum extent feasible. Retaining walls shall be constructed of materials that are used elsewhere on the site or of natural or decorative materials. Landscaping shall be provided within or in front of extensive retaining walls.

b. For single family homes, retaining walls not to exceed 12 feet in height may be permitted. However, terracing is encouraged for structural stability and safety.

c. For attached single family homes and commercial development, retaining walls should be no higher than four feet. If retention of more than 4 feet is necessary, the retaining wall shall be terraced with a three foot horizontal separation of walls. The terraced area shall be planted. A total of 12 feet of retention, in three terraces may be permitted.

(4) All fill shall be compacted in conformance with generally accepted engineering standards, as determined by the Town Engineer.

(5) To the maximum extent feasible, the site shall be laid out, and grading conducted, to maintain the natural drainage features of the site.

(6) No grading shall be allowed for purposes other than for the preparation of the ground for structures and for access. The size of the graded area should be as small as practical to accommodate the building site and access.

(7) All grading shall be accomplished in the shortest practical period of time.

(8) All areas that have been disturbed by grading shall be stabilized and planted with vegetation as soon as possible.

(9) Cut and fill slopes shall be no steeper than two horizontal to one vertical; fill slopes shall not be located on natural slopes steeper than 2:1; or where fill slope toes out within twelve feet horizontal to the top of an existing or planned cut slope.

(10) There shall be a minimum five foot setback from the rear wall of a dwelling to the top or toe of a manufactured slope or retaining wall. The only exception to this standard is in the case of a terraced rear yard where multiple levels of functional yard space are provided.

**D. Storm Drainage and Erosion Control**

Site grading shall be designed such that the rate and direction of stormwater flow off site does not increase onto adjacent properties or onto the Town's right-of-way in an uncontrolled manner.

**E. Roads and Driveways**

(1) Roads shall meet the Town's road standards for public and private roads.

(2) Roads and driveways shall be designed to substantially follow the natural contour, to the maximum extent feasible.

(3) Roads and driveways shall be designed to reduce the amount of cut and fill required, to accommodate emergency vehicle access, and to provide for year round access to the structure.

(4) If the street is proposed to be a private road, the width of paved travel lane and right of way width may vary depending upon the proposed level of use and the topography of the site. One way streets may be approved to reduce the amount of grading required, as long as emergency vehicle access is not compromised.

**F. Clustering of Development**

When a lot is developed for a use at a greater intensity than one single family home, such development is encouraged to be clustered onto the flatter areas of a site. This will reduce the length of access roads and will reduce the amount of grading and site disturbance. Such clustering of development is allowed and encouraged through the use of Cluster Subdivisions and Master Planned Developments.

The Planning Board will determine an overall site density (maximum allowable number of dwelling units or the size of other structures if not residences) pursuant to other provisions of this Law. Lots or other development may be clustered onto flatter areas of the site, provided that the total number of units does not exceed the allowable density for the site, and provided that water supply and sanitary sewerage disposal is adequate to serve the clustered development.

Any land which is left vacant because the development potential of that part of the lot has been transferred to another part of that lot shall be placed in a deeded, permanent open space easement, or other permanent, legally binding restrictions, to the satisfaction of the Counsel to the Town.

**G. Property with Slopes of 25% or greater**

(1) See Section 12.10, property in excess of 25% in slope, for additional regulations.

(2) No construction or grading shall be permitted in areas containing slopes of fifty (50) percent or greater.

# ARTICLE 13
# DESIGN STANDARDS

## Section 13.1 Purpose

Ellicottville is located in an area of natural beauty, and it contains attractive development which respects the natural features of the area. The fusion of an attractive natural and built environment contributes to the appeal of the area for both residents and visitors. As the economy of the Town of Ellicottville, and the region in general, moves from an industrial and agricultural base to a tourism-based economy, preserving an attractive natural and built environment is essential.

The purpose of these standards is to encourage innovation and excellence in design, while allowing flexibility to meet site specific conditions and personal preferences. The architectural style and materials used in new construction and remodeling should be harmonious with the other structures in the vicinity. In areas of more dense development, new buildings should complement existing buildings in the vicinity in proportion and scale. The use of durable and high quality materials is encouraged.

## Section 13.2 Applicability

These standards shall apply to all projects that require discretionary approval from the Town, including Master Planned Developments, Special Use Permits, and Site Plan Review. These standards are advisory for detached single family homes and other buildings that do not require any discretionary approvals.

These design standards are in addition to any height, setback and other dimensional regulations contained in Article 3, to any applicable requirements contained in Article 4, Master Planned Developments, and to any other applicable regulations in this Law.

## Section 13.3 Commercial Development Design Standards

Commercial development, which generally includes stores, hotels, banks, and similar office and retail land uses, is highly visible and, by its very nature, heavily used by the public. Therefore these types of land uses, in particular, should be designed to be attractive and welcoming to its users and to be an asset to the entire community.

### A. Architectural style

(1) In areas where there is a well-established, consistent architectural and/or design character, new developments should be consistent with the general character of that development. The existing proportional relationship between buildings, open space and

building setbacks should be maintained. New development should be compatible with the color, height, materials, and design of the predominant style of existing buildings.

(2) When a development contains more than one principal structure, the overall design should have a clarity and coherence that unites the development. To achieve this, individual buildings within a single development should have similar mass and bulk, height and roof style, window and door openings, colors and materials, and setback from any access roads.

(3) Architectural detailing, such as recessed windows and/or doors, bays, and textured materials or decoration, is encouraged to create variety and provide interest. The use of different textures, complementary colors, shadow lines, detailing, and contrasting shapes to create an appealing facade is strongly encouraged.

(4) The front facade should contain window and door openings, to make the buildings inviting. Attention should be given to the design and appearance of all sides of the building, not just the "front" facade.

(5) Signage should be uniform in size, type, and placement on the structures.

(6) No franchise or corporate architecture should be allowed, unless the project proponent can show that the particular style is in general conformance with the Town's Comprehensive Plan and with the purposes of this Law. The Planning Board may require modifications in a typical corporate design scheme to ensure that it complies with this provision.

**B. Massing and scale of development**

(1) Buildings should not overpower the surrounding buildings, uses and landscape.

(2) Projects should be sited to respond to site conditions and the natural features of the site. Site grading for new construction should blend in with surrounding site grades to the maximum extent possible.

(3) New buildings should relate to the surrounding environment with regard to texture, scale, massing, proportion, and color. A strong visual relationship between the building, the site, and adjacent development is vital for overall design compatibility.

(4) Buildings should be constructed to achieve a human scale and interest. Clusters of smaller buildings of varied size and orientation are encouraged, instead of vast single buildings.

**C. Parking**

(1) Parking areas should be located behind or on the side of the building which it serves. The Planning Board may approve some parking in the front of the building, if the

parking area is buffered from the road/sidewalk by a landscaped area.

(2) In large parking lots, landscaping should be used as screening and to break up large areas of asphalt.

**D. Mechanical Equipment/loading docks**

(1) Rooftop mechanical equipment should be screened from public view by the use of architecturally compatible materials.

(2) Ground level mechanical and service equipment (such as air conditioning units and utility boxes and meters) should be screened from public view by the use of landscaping, walls, fencing or other design treatment compatible with the architectural style and materials of the principal structure.

(3) Garbage dumpsters and receptacles should be placed out of view from adjacent properties, pedestrian ways (trails and sidewalks), and adjoining public roads. They should be screened from view and enclosed in perimeter fencing.

(4) Loading docks should be located to the rear of the building and screened from view.

**E. Pedestrian Access**

(1) For large developments, sidewalks or other forms of pedestrian access within a development should be provided.

(2) Depending upon the location, pedestrian access from the new development to areas outside the development may be required.

**F. Landscaping**

All developments shall be landscaped in accordance with the provisions of Section 12.6 of this Law.

## Section 13.4 Industrial Development Design Standards

The expectation for the design of and materials used in industrial developments is not as high as that for residential and commercial developments; however the expectation is that industrial developments will be designed to be uniform in appearance, within a site, and will be attractively landscaped.

**A. Architectural style**

(1) When a development contains more than one principal structure, the overall design should have a clarity and coherence that unites the development. To achieve this,

individual buildings within a single development should have similar mass and bulk, height and roof style, window and door openings, colors and materials, and setback from any access roads.

(2) Signage should be uniform in size, type, and placement on the structures.

**B. Massing and scale of development**

(1) Buildings should not overpower the surrounding buildings, uses and landscape.

(2) Projects should be sited to respond to site conditions and the natural features of the site. Site grading for new construction should blend in with surrounding site grades to the maximum extent possible.

**C. Parking**

(1) Parking areas should be located behind or on the side of the building which it serves. The Planning Board may approve some parking in the front of the building, if the parking area is buffered from the road/sidewalk by a landscaped area.

(2) In large parking lots, landscaping should be used as screening and to break up large areas of asphalt.

**D. Mechanical Equipment/garbage receptacles**

(1) Rooftop mechanical equipment should be screened from public view by the use of architecturally compatible materials.

(2) Ground level mechanical and service equipment (such as air conditioning units and utility boxes and meters) should be screened from public view by the use of landscaping, walls, fencing or other design treatment compatible with the architectural style and materials of the principal structure.

(3) Garbage dumpsters and receptacles should be placed out of view from adjacent properties, pedestrian ways (trails and sidewalks), and adjoining roads. They should be screened from view and enclosed with fencing.

**E. Loading docks**

Loading docks should not be located so that they are visible from a public right of way. If an industrial site contains multiple buildings, and each building has a loading dock, the loading docks may be located anywhere on a building, provided that it is not visible from a public road, sidewalk or trail.

### F. Landscaping

All developments shall be landscaped in accordance with the provisions of Section 12.6 of this Law.

## Section 13.5 Design Standards for Multiple-family and Attached Single Family Residential Development

### A. Architectural Style

(1) The Town of Ellicottville has a diversity of architectural styles, and this diversity is encouraged. However, new development shall maintain a scale of development that does not overwhelm the site and the neighborhood in which it is located.

(2) When a development contains more than one principal structure, the overall design should have a clarity and coherence that unites the development. To achieve this, individual buildings within a single development should have similar mass and bulk, height and roof style, window and door openings, colors and materials, and setback from any access roads.

(3) Architectural detailing, such as recessed windows and/or doors, bays, and textured materials or decoration, is encouraged to create variety and provide interest. The use of different textures, complementary colors, shadow lines, detailing, and contrasting shapes to create an appealing facade is strongly encouraged.

(4) Roof pitch should complement the building style of the home. Dormers, gables, or variations in roof planes are encouraged.

(5) Long blank facades should be avoided. Window shape and placement that breaks long expanses of blank wall are encouraged, as are porches, decks and other façade features.

(6) Residential heating/air conditioning units should be located to have the minimum visual and noise impacts on adjacent residential neighbors.

### B. Massing/scale

(1) Buildings should be constructed to achieve a human scale and interest. Clusters of smaller buildings of varied size and orientation are encouraged, instead of vast single buildings.

(2) Buildings should not overpower the surrounding buildings, uses and landscape.

(3) New buildings should relate to the surrounding environment with regard to texture, scale, massing, proportion, and color. A strong visual relationship between the building, the site, and adjacent development is vital for overall design compatibility.

(4) Projects should be sited to respond to site conditions and the natural features of the site. Site grading for new construction should blend in with surrounding site grades to the maximum extent possible.

**C. Parking**

(1) Surface parking shall be located to be convenient to the units which they are intended to serve.

(2) Parking areas shall be designed such that they do not impede access by emergency vehicles.

(3) Garages, if any, shall be consistent with the architectural design, style and materials of the house itself. The garage should not be the most prominent architectural feature of the front façade. It should be integrated into building through the use of the same or compatible architectural detailing, such as trim, colors, and siding and roofing materials.

**D. Pedestrian Access**

(1) Sidewalks or other forms of pedestrian access should be provided within a development to connect residences with parking lots and to other features of the development.

(2) Depending upon the location, pedestrian access from the new development to areas outside the development may be required. Where existing sidewalks are located in the public right-of-way, the development will be required to connect the proposed dwelling units to that sidewalk.

**E. Mechanical Equipment/garbage dumpsters**

(1) Rooftop mechanical equipment should be screened from public view by the use of architecturally compatible materials.

(2) Ground level mechanical and service equipment (such as air conditioning units and utility boxes and meters) should be screened from public view by the use of landscaping, walls, fencing or other design treatment compatible with the architectural style and materials of the principal structure.

(3) Garbage dumpsters and receptacles should be placed out of view from adjacent properties, pedestrian ways (trails and sidewalks), and adjoining roads. They should be screened from view and enclosed with fencing.

### F. Landscaping

All developments shall be landscaped in accordance with the provisions of Section 12.6 of this Law.

## Section 13.6 Design Standards for Single-family detached homes and Two-family homes

### A. Building setbacks

(1) In areas where there is a well established development pattern, especially in areas where the lots are smaller, the front façade of the home should be parallel to the road from which it takes access. For larger lots, homes may need to be sited at an angle in order to minimize grading or to obtain the most advantageous views.

(2) For new subdivisions, the Planning Board may establish a maximum setback or build-to line. If such lines are established, the homes shall be sited in accordance with these provisions.

(3) For infill lots in established areas, the new home should maintain the same front yard setback as currently established on that road. If there is no prevailing setback, the new home should be sited on the average setback line, topography permitting. If the established setback pattern encroaches into the minimum setbacks of this Law, the new construction must meet the standards contained in this Law, unless an area variance is granted by the Zoning Board of Appeals.

### B. Design/ Massing/Scale

(1) The Town of Ellicottville has a diversity of architectural styles, and this diversity is encouraged. However, new development is encouraged to maintain a scale of development that does not overwhelm the site and the neighborhood in which it is located.

(2) For infill development on small lots, a new house should attempt to fit in with the houses in the existing neighborhood or to improve the existing neighborhood, by keeping similar roof pitch, eave and ridge heights, if there is consistency in the design of the area and the topography permits. Roof form, mass and/or façade details should be varied among neighboring homes to create visual interest. Within a subdivision, repetition of identical floor plans and elevations should be avoided.

(3) Long blank facades should be avoided. Window shape and placement that breaks long expanses of blank wall are encouraged, as are porches, decks and other façade features.

(4) Residential heating/air conditioning units should be located to have the minimum visual and noise impacts on adjacent residential neighbors.

(5) Roof pitch should complement the building style of the home. Dormers, gables, or variations in roof planes are encouraged.

(6) Homes should be sited to respond to site conditions and the natural features of the site. Site grading for new construction should blend in with surrounding site grades to the maximum extent possible.

## C. Garages/parking

Garages should be consistent with the architectural design, style and materials of the house itself. The garage should not be the most prominent architectural feature of the front façade. It should be integrated into building through the use of the same or compatible architectural detailing, such as trim, colors, and siding and roofing materials.

# ARTICLE 14
# EFFECTIVE DATE AND
# READOPTION OF 1990 ZONING ORDINANCE

## Section 14.1 Existing Zoning Ordinance amended, readopted and reenacted

The existing Zoning Ordinance of the Town of Ellicottville, New York, as amended, adopted April, 1990, is hereby reenacted, readopted and amended to read as set forth in this local law, except as expressly provided otherwise herein. This readoption and reenactment and the adoption of any amendment shall not affect any pending, or prevent any future prosecution of, any action to abate any violation existing at the time this law is readopted, reenacted and amended, if the use is in violation of the provisions of this law as readopted, reenacted and amended. Nothing herein shall be deemed to change the status of nonconforming uses created by virtue of the Zoning Ordinance adopted April, 1990, as amended, if such uses remain nonconforming under the provisions of this law, as readopted, reenacted and amended.

## Section 14.2 Effective Date

This revised and restated law shall become effective December 1, 2009, herein referred to as the "effective date."

## Section 14.3 Transition Provisions

A. This revised, restated and amended law shall apply to all applications for building permits, site plan approvals, subdivision approvals, special approvals, special use permits, master planned developments, or any other approval or authorization hereunder, submitted on or after the effective date.

B. If a completed application is submitted prior to the effective date and if such application is diligently prosecuted to conclusion, the application shall be governed by the provisions of the Zoning Ordinance in effect immediately prior to the effective date, unless the applicant elects by written notice accompanying the application or delivered within a reasonable time after submission of the application to be governed by the provisions of this revised, restated and amended law as in effect on and after the effective date. For the purposes of this section only, an application shall be deemed "completed" if it contains all required information, materials, and fees normally and reasonably required by the appropriate Town official(s) (e.g., Town Planner with respect to subdivision, special use permit, rezoning, master planned development, and site plan approval applications and the Zoning Official with respect to building permit, variance, and special approval applications) including initial SEQR forms, to commence the review process by the appropriate Town official or board. An application shall be deemed "diligently prosecuted to conclusion" if the applicant promptly responds to any inquiries and promptly supplies any additional information reasonably required by the reviewing Town officials and/or boards, appears at all required scheduled public hearings, and otherwise cooperates so as to permit and enable the appropriate Town officials and/or

boards to adequately and completely review the application and render a decision on same within a reasonable period of time of its submission, and in any event within nine months of its submission.

C. The Town Board may, with respect to a specific application, if an applicant demonstrates 1) severe, adverse economic impact will result to the applicant if this revised, restated chapter is applied to the applicant's application because of a substantial expenditure of funds by the applicant prior to the adoption of this revised, restated law and in reliance upon the provisions of the ordinance in effect prior to the effective date; or 2) delay in rendering a decision by the applicable official or board is due to the failure of such official or board to act within a reasonable period of time and not due to any failure or default by the applicant; extend by no more than four additional months the privilege of having the application be governed by the provisions of the zoning ordinance in effect prior to the effective date, or extend by no more than four additional months the nine-month period within which diligent prosecution of the application must be completed to obtain the benefit of utilizing the pre-effective-date ordinance provisions. An application for extension under this subsection must be made prior to, or within 30 days after, the end of any applicable period by written request to the Town Clerk or Town Supervisor setting forth the requested relief and the grounds for same.