

# **ZONING LAW FOR TOWN OF MIDDLEBURGH**

## **ARTICLE I**

### 1.1 Title

This law shall be known as the Town of Middleburgh, New York, Zoning Law.

### 1.2 Enactment

A law regulating and restricting the location, construction, alteration and use of buildings and land in the Town of Middleburgh, Schoharie County, New York, pursuant to the zoning provisions of Article 16 of the Town Law of the State of New York.

### 1.3 Purposes in View

This law is designed to lessen congestion in the public roads and streets; to minimize risks from fire, flood, panic and other dangers; to promote health and general welfare; to provide for adequate light and air; to prevent overcrowding of the land; to avoid undue concentration of population; to facilitate the orderly planning for future transportation, water supply, sewerage disposal, schools, parks and other requirements. This law is made with reasonable consideration of the character of the various districts, and their peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the Town.

### 1.4 Scope

These regulations shall apply to the construction, installation or alteration of any building, structure or appurtenant system, any change in use, and any lot, plat, plot or parcel of land used, occupied or otherwise maintained as herein provided for in the Town of Middleburgh.

## ARTICLE II

### USE AND INTERPRETATION OF WORDS

#### 2.1 General

For the purpose of this law certain words or terms used therein shall be interpreted of defined as follows:

- 2.11 Words used in the present tense include the future tense.
  - 2.12 Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary.
  - 2.13 The word “shall” is always mandatory. The word “may” is permissive.
  - 2.14 A “building” or “structure” includes any part thereof. A “building” includes all other structures of every description except fences and walls regardless of dissimilarity conventional building form.
  - 2.15 The word “used” or “occupied” as applied to any land or building shall be construed to include the words “intended, arranged, or designed to be used or occupied.”
  - 2.16 The word “person” includes a corporation as well as an individual.
  - 2.17 The word “lot” includes the word “plot” or “parcel”.
- 2.2 Definitions - refer to Attachment II.

# ESTABLISHMENT OF ZONING

## ARTICLE III

### DISTRICTS AND OFFICIAL MAP

#### 3.1 Zoning Districts

The Town of Middleburgh establishes and is hereby divided in the following zoning districts:

- R-1 High Density Residential
- R-2 Medium Density Residential
- R-3 Low Density Agriculture/Residential
- FPD See Section 4.26
- C Commercial
- PDD Planned Development District

#### 3.2 Official Zoning Map

The location and boundaries of the zoning districts established in Section 3.1 are shown on the Official Zoning Map of the Town of Middleburgh which together with everything shown thereof and all amendments thereto are hereby adopted by reference and declared to be appurtenant part of the law. **Zoning map attached at end.**

#### 3.3 Interpretation of Districts Boundaries

In general, the district boundary lines are intended to follow existing lot lines, Public Highway center lines, and the center lines of natural water courses at mean water levels, or are intended to be parallel to Public Highway center lines at such distances therefrom as are indicated on the Official Zoning Map.

#### 3.4 District Boundaries

**R-1 High Density Residential:** Starting at Route 30 at the south Middleburgh town line thence running west along said property line to the west property line parcel 106-4-11 thence northerly along said property line and extended to 800 feet from town line thence paralleling the town line at a width of 800 feet to center line Route 30.

**R-2 Medium Density Residential:** Beginning at the intersection of Posson Hill Road and Brooky Hollow Road running south a distance of 4000 feet, plus or minus, along Brooky Hollow Road to Rural Road #21, thence along rural road #21 to east property line parcel 131-5-15.1 and 131-5-12, 131-5-16. Also along Coons Road from Rural Road #21

back to Rural Road #21 and paralleling the indicated highways on both sides at a distance of 400 feet.

**Commercial District #1:** Beginning at the center line Route 30 where it intersects the 100 year flood plain between Christmas Tree Lane and Bouck Road, thence paralleling Route 30 on the east side at a distance of 400 feet to the south property line of parcel #095-4-4 thence along said property line to the west property line of parcel #095-4-4 across to the west property line #096-1-3 along said property line to west property line parcel #096-1-2 along said property line to west property line parcel #084-6-16 extending northerly to the town line thence west along said town line to center line Route 30 thence along center line Route 30 to beginning.

**Commercial District #2:** Beginning at the center line Route 30 where it intersects the 100 year flood plain between Christmas Tree Lane and Bouck Road thence along the 100 year flood plain line to the west to where it intersects the center line of Borst Mill Lane thence to the intersect of the center line Frisbieville Road thence along center line Frisbieville Road to the intersect of the west property line of parcel #083-5-11.2 along said property line to the west property line of parcel #083-5-7 along said property line to the west property line parcel #083-5-9 and #083-5-6 across parcel #083-5-5 to the west property line of parcel #083-5-4 along said property line to the west property line parcel #083-5-3 to the North Middleburgh town line east along Middleburgh town line to the intersection with center line Route 30 thence along center line Route 30 to its beginning excluding Parcel #083-5-17.111, #083-5-17.12, #083-5-17.2, #083-5-17.113, #083-5-17.117 that border Clover Lane and are R-3.

**Commercial District #3:** Beginning at the center line Route 145 where it intersects the South Middleburgh Village line thence paralleling Route 145 on the west side at a distance of 400 feet to the south property line of parcel #118-4-3, east along said property line to the center line Route 145 South along center line Route 145 to the south property line parcel #118-4-5 thence paralleling Route 145 on the east side at a distance of 400 feet to the intersection of the center line Gridley Road west along center line Gridley Road to the east property line parcel #118-1-13 along said property line to the east property line parcel #118-1-16 extending to the center line of the Little Schoharie Creek to the Southeast corner of parcel #118-1-36.2 thence along east property line parcel #118-1-36.2 to south property line parcel #118-1-38 thence along said property line to east property line parcel #118-1-38 thence along said property line to the intersection of the center line County Route 21 along the center line County Route 21 to the North property line parcel #118-1-38 thence along said property line to east property line parcel #118-1-24 to the center line County Route 21 thence along center line County Route 21 to its beginning.

**Commercial District #4:** Beginning at the center line Route 30 and the South Middleburgh Town line thence along center line Route 30 the intersection of North property line parcel #106-6-6 thence along said property line to east property line parcel #106-6-6 thence along said property line to the east property line parcel #106-6-5 thence along said property line to the east property line parcel #106-6-4 thence along said

property line to the east property line parcel #106-6-10 thence along said property line to South Middleburgh town line thence along Middleburgh town line to beginning.

This district (C-4) includes the following properties:

- 106-6-4
- 106-6-5
- 106-6-6
- 106-6-9
- 106-6-10

**Commercial District #5:** Beginning at the center line Route 30 where it intersects the north Middleburgh Village line thence west along said village line to the northwest corner of the village line northerly to a point perpendicular to center line Route 30 at a distance of 400 feet that lies on north property line parcel #106-1-4 thence paralleling center line Route 30 at 400 feet to the center line Mill Lane along said center line east to center line Route 30 north along center line Route 30 to the north property line parcel #95-7-19 thence along said property line to east property line parcel #95-7-19 thence along said property line to the east property line parcel #95-7-20 thence along property line to the south property line parcel #95-7-20 thence along said property line to the south property line parcel #95-7-21 thence along said property line to the center line Route 30 thence south along said center line Route 30 to the intersection center line Middle Fort Road thence along said center line Middle Fort Road to the Middleburgh Village line thence along said Middleburgh Village line to beginning.

**Commercial District #6:** The commercial boundary begins at the point where the floodplain intersects the centerline of State Route 145 then following the floodplain boundary northward to a point where the floodplain intersects tax parcel 106.-3-11. At this point the commercial boundary begins to run in a northerly direction parallel to the east side of the centerline of State Route 145 at a distance of 500 feet. The commercial boundary continues until it intersects the southern boundary of tax parcel 95.-6-2 where it follows this parcel boundary easterly until it intersects the floodplain boundary. At this point the commercial boundary continues northerly following the floodplain boundary until it intersects the northern boundary of tax parcel 95.-6-2 where at this point the commercial boundary continues westerly along the northern boundary of tax parcel 95.-6-2 until it intersects a point along the northern boundary of tax parcel 95.-6-2 that is 500 feet from the centerline of State Route 145. At this point the commercial boundary begins to run in a northerly direction parallel to the east side of the centerline of State Route 145 at a distance of 500 feet until it intersects the centerline of Sunnyside Road. At this point the centerline of Sunnyside Road becomes the commercial boundary for exactly 1080 feet in a northerly direction. At this point the commercial boundary extends westerly to a point at the centerline of State Route 145 that is 1250 feet northerly of the intersection of the centerline of Sunnyside Road and the centerline of State Route 145. In a northerly direction from this point the centerline of State Route 145 becomes the commercial boundary until it reaches a point extended from the northern boundary of tax parcel 95.-1-12. At this point the commercial boundary follows the northern boundary of tax parcel

95.-1-12 westerly to a point that is parallel to the west side of State Route 145 at a distance of 800 feet. At this point the commercial boundary begins to run in a southerly direction parallel to the west side of the centerline of State Route 145 at a distance of 800 feet until it intersects the southern boundary of tax parcel 95.-1-12. At this point the commercial boundary follows the southern boundary of tax parcel 95.-1-12 easterly until it intersects a point that is parallel to State Route 145 at a distance of 500 feet. At this point the commercial boundary begins to run in a southerly direction parallel to the west side of the centerline of State Route 145 at a distance of 500 feet until it intersects the southern boundary of tax parcel 95.-6-27. At this point the commercial boundary follows the southern boundary of tax parcel 95.-6-27 easterly to a point extended to the centerline of State Route 145. At this point the commercial boundary follows the centerline of State Route 145 southerly to the beginning point.

## **ARTICLE IV**

### **REGULATIONS AND STANDARDS**

#### 4.1 Use Schedule

The attached District Regulations shall be deemed to be part of this Section and is referred to herein as the “District Regulations”, attached at end of law, Attachment I (page 18).

#### 4.2 Land Use Activities, Districts, and Special Requirements

4.21 R-1 High Density Residential District  
See Attachment I for district use standards and regulations

4.22 R-2 Medium Density Residential District  
See Attachment I for district use standards and regulations

4.23 R-3 Low Density Agriculture/Residential  
See Attachment I for district use standards and regulations

#### 4.24 C – Commercial District

See Attachment I for further district use standards and regulations.

#### 4.25 FPD – Flood Protection District

The regulations outlined in the Town of Middleburgh Flood Damage Prevention Law (Attachment IV, page 45) shall be followed at all times in the Flood Protection District in addition to the regulations of the underlying zoning district.

##### 4.25.1 New Parcels in Flood Protection District

Parcels in existence in the Flood Protection District (special flood hazard area as indicated by most current Flood Insurance Rate Map) prior to December 31, 2007 can be utilized without the necessity of an area variance as long as the parcel complies with the area requirements of the underlying zoning district. Any new parcel proposed in the Flood Protection District must meet the corresponding area requirements when the only designated building site is in the regulated floodplain. If a new parcel has a designated building site located outside of the regulated floodplain, the underlying, less stringent zoning district area requirements can be used.

#### 4.26 PDD - Planned Development District

A Planned Development District (PDD) shall be treated as an amendment to this zoning law. The PDD is designed to accommodate such large-scale uses as will be of benefit to the community, but which could not have been anticipated at the time of adoption of this law.

Where the planned development concept is deemed appropriate through the rezoning of land by the Town Board to a Planned Development District, the set of conventional land use activities and area specifications as set forth elsewhere in this ordinance are hereby replaced by a review and approval process in which an approved Development Plan becomes the basis for land use controls in said Planned Development District.

For administrative procedure in approving a PDD see Attachment III Section 6 for further district regulations.

#### 4.3 Special Conditions and Special Use Permits

Land Use activities listed in Attachment I as being special uses shall not be permitted until such special uses meet all conditions as required by the Planning Board in accordance with the provisions of Attachment III Section 7.0 of this Law.

#### 4.4 Supplementary Use Regulations

##### 4.41 General Provisions

###### (1) Public Utilities

This Law is not intended to restrict the construction or use of underground or overhead public utility distribution facilities or of other public utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structures shall conform in character to the environment in which erected.

Telecommunications Facilities are considered public utilities when needed by a licensed public utility and the Town of Middleburgh recognizes the need for such services. However, telecommunications facilities require a special use permit as outlined in Attachment III Section 7.7.

###### (2) Damaged Buildings

Any building which is damaged by fire or other accidental cause, or by flood, wind, lightning or other natural cause, to the extent that it is no longer used for its regular or former purpose, shall be repaired, rebuilt, or

razed within 120 days after the damage is sustained. At the request of the Enforcement Officer, the Board of Appeals may grant an extension for a period not to exceed one year after the expiration of the 120-day period. Such extension will only be granted if the owner of the property can demonstrate that progress has been made and sufficient reasons exist for not complying with the original 120-day time period.

(3) Principal Uses per Parcel

No more than one dwelling per parcel shall be allowed in any district unless approved as a Planned Development District (PDD).

4.42 Gasoline Stations

In a district where permitted, a gasoline station shall be subject to the following restrictions:

- (1) No fuel pump shall be located closer than 20 feet from any side lot line nor closer than 25 feet from any street line or highway street line or highway right of way measured from the edge of the fuel island.
- (2) No access drive shall be within 200 feet of and on the same side of a street as a school library, theater, church, or other public gathering place, park, playground or fire station.
- (3) All major repair work and servicing shall be done within a completely enclosed building.
- (4) Gasoline stations that do not perform service or repair work shall not have any apparent unused cars stored on the property.

4.43 Public Garages

- (1) No public garage shall have an opening in the roof side of rear walls less than fifteen feet from any lot line.
- (2) All repair work requiring more than 12 hours elapsed time shall be done within a completely enclosed building whenever possible. A vehicle may be repaired outside provided the vehicle and disassembled parts are not in the way of automotive or pedestrian traffic.

4.44 Excavations and Mining

Any proposed excavation adversely affecting natural drainage or structural safety of adjoining buildings or lands shall be prohibited. Excavation shall not create unreasonable dust or noise, contribute to soil erosion or create any kind of noxious or injurious substance or condition nor cause public hazard. No topsoil

shall be stripped, excavation and grading incidental to construction on the premises from which it is removed unless a layer of not less than six (6) inches of topsoil is left on the premises and this remaining layer is seeded to prevent erosion.

All proposed excavation and mining activity shall be in the Commercial or R3 Districts by Special Use Permit (Attachment III, Section 7.0) authorized by the Town Planning Board. Such Special Use Permit shall be renewed annually, subject to Town Planning Board approval of an operating plan for said activity and a plan for reuse of the excavation area. A performance bond may be required by the Town Planning Board.

#### 4.45 Manufactured Home

Manufactured homes, not located in a Manufactured Home Park, will be permitted only under the following conditions:

- (1) In all districts a manufactured home located on a private lot owned by the owner of said manufactured home will be permitted when:
  - (a) All of the area regulations for such districts, as listed in Attachment I – District Regulations, have been complied with.
  - (b) The manufactured home shall be placed on a 6”reinforced concrete slab or suitable foundation capable of containing the manufactured home in a stable position and with anchors or tie-downs capable of securing the stability of the manufactured home.
  - (c) The manufactured home is provided with skirts to screen the space between the manufactured home and the ground. Such skirts shall be of a permanent material and providing a finished exterior appearance.
  - (d) Unit Installation – At the time of installation of the manufactured home, the tires and wheels, and the hitch, shall be removed and the unit shall be securely blocked, leveled, tied down, and connected to the required utility systems and support services.
  - (e) Any construction of storage space, additional rooms, or enclosed patios or carports shall have a finished exterior appearance similar to the existing manufactured home. No exposed building paper, wallboard, or other structural material will be permitted.
  - (f) The manufactured home bears the seal required by the State of New York or an equivalent acceptable to the State of New York. New

manufactured home installations shall consist of manufactured homes no older than 15 years old.

- (g) A Certificate of compliance indicating that all the requirements of this Section 4.45 (1) have been met.
- (2) Special Necessity: In R-3 districts the Planning Board may authorize a temporary special use permit for one or more manufactured homes to be located on land not owned by the occupants of such manufactured homes, provided that:
  - (a) All of the requirements set forth in Section 4.45(a-g) above are met.
  - (b) Written proof is presented to the Planning Board by the property owner that a special necessity exists by reason of an employer-employee relationship between the owner of a farm operation as defined in Agriculture and Markets Law Section 301 and his tenant employee where said owner desires to have the tenant employee reside on such farm; and such tenant employee is involved in the production function of the farm operation on a minimum of a part-time seasonal basis and such tenant employee is not a farm partner/owner. Such temporary permit shall be reviewed by the Planning Board and only issued if a majority of the Planning Board agrees that a special necessity exists. Such temporary permit shall expire twenty-four (24) months from the date of issuance and only renewed by the Planning Board if the standards for the special necessity continue to be met.
- (3) Interim Dwelling: In any district the Planning Board may authorize a temporary special use permit for a manufactured home or recreational vehicle when such manufactured home or recreational vehicle is to be used as an interim dwelling during construction of a permanent residence or in the event a permanent residence has been damaged or destroyed or other similar hardship conditions. In such cases said manufactured home shall be removed within 18 months from the date of issuance of the temporary special use permit. An extension may be granted by the Planning Board.

#### 4.46 Manufactured Home Park

Manufactured Home Parks are allowed in R-3 Districts only, by Special Use Permit authorized by the Planning Board, when the provisions of this Section 4.46 have been complied with.

- (1) Application for Permit – Written application for a permit will be filed in duplicate with the Enforcement Officer and shall include the following:
- (a) Names and addresses of all applicants, if an individual or partnership, and the names and addresses of principal officers if a corporation;
  - (b) Name and address of owner of land upon which the manufactured home park is to be located;
  - (c) Location map;
  - (d) Sketch drawing(s) of the proposed manufactured home park indicating how it is to be designed so as to be in conformity with the requirements of Section 4.46 (4) of this law;
  - (e) If public water and sewerage systems are not to be used, a written statement from the health officer for the County indicating what measures will be necessary for the park;
  - (f) Sketch plans or written descriptions of all buildings, streets, parking areas, recreation and open spaces, and landscaping to be constructed or provided within the manufactured home park;
  - (g) An indication of existing topography and drainage patterns including wet or swampy areas;
  - (h) A copy of all contemplated park rules, regulations and covenants; a list of management and tenant responsibilities; a written statement of any entrance and exit fees, utility connection fees, or any security deposits to be charged.
  - (i) Such further information as the developer may feel is necessary to describe his intent and ability to comply with the environmental, health, and safety standards of this law.

(2) Procedure and Permits

- (a) The Enforcement Officer shall follow the procedures specified in Attachment III, Section 1 of this Law.
- (b) The Planning Board shall act in accordance with Attachment III, Section 7.0 of this Law except that the special use permit, if authorized, shall be temporary. Issuance of a temporary special use permit is authorization for the applicant to proceed with final

plans incorporating any conditions attached to said temporary special use permit.

- (c) Final plans for the proposed manufactured home park, or a portion of it if construction is to be staged, shall be submitted to the Planning Board within one year from the date of issuance of the temporary special use permit or such temporary special use permit may be withdrawn.
  - (d) Upon approval of final plans by the Planning Board the Enforcement Officer shall issue a permit for construction.
- (3) Renewal of Permits – The Enforcement Officer shall review a manufactured home park permit every two years from the date of issuance. If the manufactured home park has not been constructed in accordance with approved plans and all conditions attached thereto, or if a violation of this Law shall be found, or if any unapproved change shall have taken place, the permit will not be renewed until said manufactured home park has been brought into compliance. In such case the Enforcement Officer shall serve an order upon the holder of the permit in accordance with the provisions of Section 7 of this Law.
- (4) Environmental Requirements
- (a) Density and Lot Size – The density of development in a manufactured home park shall not exceed 4.0 units per gross acre. Generally, manufactured home lots shall have a minimum area of 6,000 square feet and a minimum width of 55 feet.
  - (b) Separation – Manufactured home units may be positioned in a variety of ways within a park provided that a separation of at least 30 feet is maintained between units. A drawing of the proposed layout of manufactured home units should be prepared.
  - (c) Setback – No manufactured home shall be located less than 25 feet from the pavement edge of a private street or 15 feet from the right-of-way of any public street within the manufactured home park. A minimum of 25 feet shall be maintained between manufactured home units and all property lines except that at least 50 feet shall be maintained between all units and any property line abutting an existing public road or highway.
  - (d) Road Layout and Construction – A drawing of the proposed park road layout, including connections to be made to adjacent existing roads or highways, shall be included in all manufactured home park plans. Straight, uniform gridiron road patterns should be

avoided unless manufactured home clustering, landscaping, and an interesting open space system can relieve them. All roads within a manufactured home park shall be at least 20 feet wide and constructed in a manner acceptable to the Town Planning Board.

- (e) Parking – At least Two off-street parking spaces shall be provided for each manufactured home site. Such spaces may be located on the individual site or grouped to serve 2 or more manufactured home sites. Off-street parking spaces shall be constructed of at least a 12-inch gravel base with a 4-inch limestone surface material, such as crusher run. Supplemental parking area shall be provided for the storage or temporary parking of travel trailers, campers, boats, snowmobiles, and similar auxiliary vehicles.
- (f) Manufactured Home Sales Area – The display and sale of manufactured homes shall be permitted only if the sales area is landscaped and provided with a hard, dust-free surface for the off-street parking of at least 6 cars and no more than 8 units are displayed at any one time. No display unit shall be located less than 15 feet from a public right-of-way.
- (g) Open Space Areas and Landscaping – A variety of open spaces shall be provided so as to be usable by, and easily accessible to, all park residents. Such open space shall be provided on the basis of 500 square feet for each manufactured home unit with a total minimum requirement of 12,000 square feet. Part or all of such open space shall be in the form of developed recreation areas located in such a way, and of adequate size and shape, as to be usable for active recreation purposes.
- (h) Manufactured Home Stand – Each manufactured home site shall be provided with a stand, which will give a firm base and adequate support for the manufactured home. Such stand shall have a dimension approximating the width and length of the home and any expansion or extensions thereto. Well-anchored tie-downs shall be provided at least on each corner of the stand with spacing no greater than 10 feet apart on each side. The manufactured home shall be placed on a 6” reinforced concrete slab or suitable foundation capable of containing the manufactured home in a stable position and with anchors or tie-downs capable of securing the stability of the manufactured home.
- (i) Unit Installation – At the time of installation of the manufactured home, the tires and wheels, and the hitch, shall be removed and the unit shall be securely blocked, leveled, tied down, and connected to the required utility systems and support services. The

manufactured home shall be completely skirted prior to occupancy. Said skirts shall be of a permanent material and provide a finished exterior appearance.

- (j) Water Supply – When a public water supply is not available an approved private supply and system shall be established. Private systems shall provide 150 gallons per unit per day and be adequate to supply at least 6 gallons per minute at a pressure of 20 pounds per square inch to each manufactured home stand. Water connections shall follow details of the manufactured home Manufacturers’ Association.
  - (k) Sewage Disposal – When public sewage disposal is not available an approved private system shall be established. The design and construction of all components of such system shall be subject to the inspection and approval of the appropriate health department or local official.
  - (l) Solid Waste Disposal – Provisions shall be made and approved for the storage, collection, and disposal of solid waste in a manner that will cause no health hazards, rodent harborage, insect breeding areas, fire hazards or air pollution. Storage for solid waste containers shall be screened from public view.
  - (m) Electricity and Telephone – The distribution system for electrical and telephone service shall be installed underground and shall comply with the requirements of the utility and telephone company.
  - (n) Fuel Systems – All manufactured home sites shall be provided with facilities for the safe storage of necessary fuels. All systems shall be installed and maintained in accordance with applicable codes and regulations governing such systems.
  - (o) Mail Service – Mailbox location shall provide safe and easy access for the pickup and delivery of mail. Mailboxes grouped for cluster delivery shall be located so that stopping for pickup and delivery will not occur on the public right-of-way.
- (5) Park Operation, Maintenance and Inspections
- (a) Occupancy Restrictions – No space shall be rented in any manufactured home park for the placement and use of a manufactured home for residential purposes, except for periods in excess of 60 days. No manufactured home manufactured more

than fifteen years prior to its placement in the manufactured home park may be occupied.

- (b) Responsibility of Park Operator – The person to whom a permit for a manufactured home park is issued shall be responsible for operation of the park in compliance with this ordinance and shall provide adequate supervision to maintain the park, its common grounds, streets, facilities and equipment in good repair and in a clean and sanitary condition.
- (c) Responsibility of Park Occupants – The park occupant shall be responsible for the maintenance of his manufactured home and any appurtenances thereof, and shall keep all yard space on his site in a neat and sanitary condition.
- (d) Inspection – It shall be the duty of the Enforcement Officer to make necessary inspections required every second year for renewal of manufactured home park permits. Such inspection shall be carried out at reasonable times, after prior notice to the park operator, and in emergencies, whenever necessary to protect the public interest.

#### 4.47 Home Occupation

The Town of Middleburgh recognizes the need to nurture and encourage home-based business and to grow its local economy. Home based businesses represent a strong potential for our economy. These types of businesses also provide alternative incomes for families. Because some home based businesses may require additional services and infrastructure and there may be negative impacts on traffic, signage, noise and other qualities, the Town desires to set specific performance criteria and review criteria for home based businesses. Home Occupations are allowed in all zones listed in the Use Schedule (Attachment I). For review of Home Occupation, a Home Occupation application must be obtained from the Town Clerk's Office then submitted to the Enforcement Officer for review. To be determined a Home Occupation by the Enforcement Officer, the following standards must be met:

- (1) The Home Occupation must be operated by the owner of the property. Proof of ownership may be requested by the showing of a tax bill, survey or deed.
- (2) No more than five hundred (500) sq. ft. of floor area of the dwelling unit or (30%) of the total floor area of the dwelling unit may be used in connection with a Home Occupation, which ever is lesser. Floor area requirements refer only to heated habitable rooms within the dwelling unit.

- (3) An EXISTING accessory structure can be used for a Home Occupation provided that there are no exterior modifications and that the use will not change the residential or agricultural character of the area. A NEW accessory structure can be use for a Home Occupation provided the use will not change the residential or agricultural character of the area.
- (4) The total number of Home Occupations conducted within the dwelling is not limited, except that the cumulative impact of all Home Occupations conducted shall not exceed the impact of a single, full time Home Occupation. (example: day care during the day with a bed and breakfast at night.)
- (5) Home Occupations must meet all requirements of the zoning district in which it is located. In addition, the following standards are required:
- (a) Employees. A home occupation shall be incidental and secondary to the use of a residence or home. It shall be conducted in a manner which does not give the outward appearance of a business, does not infringe on the right of the neighboring property to enjoy the peaceful occupancy of their dwelling unit, and does not alter the character of the neighborhood. A home occupation may be conducted within a dwelling unit and/or within accessory structures. The home occupation is to be conducted with no more than two non-resident assistants or employees at any one time. (Day care for children shall be based on a case by case basis)
  - (b) Signs. Any signs used in conjunction with a home occupation shall meet the requirements of Section 4.6 (page 12) of the local law, and shall not exceed 8 sq. ft. In addition, the sign shall be an unanimated, non-illuminated flat or window sign. The sign shall be permitted on the street front of the lot which the dwelling is located. A sample of the sign and location of the sign is required on the site plan if the sign is not located on or in the window of the dwelling.
  - (c) Parking. Off street parking shall be provided as required in Section 4.7 (page 13) of the local law. No more than one vehicle larger than a passenger vehicle may be parked in a location visible from a public road or neighboring properties.
  - (d) Traffic. Automobile and truck traffic generated shall not be excessive, considering both the character of the road on which the use is located and the volume of traffic that would otherwise be generated by a typical residential use.

- (e) Outside Storage. There shall be no exterior storage of materials, equipment, vehicles, or other supplies used in conjunction with a home occupation, unless screened from the road and from other properties.
- (f) Nuisance. No offensive appearance, noise, vibration, smoke, electrical interference, dust, odors, or heat shall occur. The use of substances which may endanger public health or safety or which pollute the air or water are prohibited.
- (g) Fees. After meeting with the Enforcement Officer and the determination is made that the proposed use is an allowable Home Occupation, a one time application fee as set by the Town Board (payable to the Town of Middleburgh) shall be made at the same time of the submittal of the completed application to the Enforcement Officer.
- (h) Validity. Once the application is approved, the owner has one year from the approval date to complete the requirements agreed upon and obtain a Certificate of Compliance from the Enforcement Officer. The Home Occupation permit is non transferable.
- (i) Expiration of Approval. If the applicant does not get a Certificate of Compliance within one year, the approval is rescinded. Extensions may be granted if requested by the applicant in writing stating the exact completion date.
- (j) Required Inspections. Before any Certificate of Compliance is issued by the Zoning Enforcement Officer, all required inspections will take place. A building and zoning permit may be required if alterations are made to the interior, exterior, parking or signage. The Enforcement Officer may inspect the site for compliance purposes.

#### 4.48 Existing Undersized Lots

Any lot held in single and separate ownership prior to the original adoption date and subsequent amendments of the Town of Middleburgh Zoning Law whose area and/or width and/or depth are less than the specified minimum lot requirements for that district, may be considered as complying with such minimum lot requirements, and no variance shall be required, provided that:

- (a) Such lot has an area of at least 5,000 square feet and a minimum width of at least 50 feet at the required setback line.
- (b) The following minimum yard dimensions are maintained: each side yard, 8 feet; front yards, 20 feet; and rear yards, 15 feet.

(c) All other requirements for that district are complied with.

#### 4.48.1 Height Exceptions

The height limitations of this law, as shown on the Area Schedule shall not apply to the following structures: farm buildings and structures, church spires, belfries, cupolas, chimneys, ventilators, skylights, water tanks, bulk heads, and other necessary mechanical appurtenances usually carried above the roof level.

#### 4.49 Transition Requirements for District Boundaries

(a) Where a lot in a commercial or PDD district abuts a lot in a residential district, a strip 12 feet wide immediately adjacent to said residential lot shall not be used for storage of any material or goods, parking, or roadway and shall be provided with a solid wall, fence, or hedge at least six feet but no more than 8 feet in height. Such wall, fence, or hedge shall begin at a point no more than five feet from the front and/or side property line and shall extend along the full dimension of the abutting lots and shall be properly maintained.

#### 4.50 Yards (set in the area schedule, and defined)

4.501 Corner Lots - On a corner lot, each side, which abuts a street, shall be deemed a front lot line, and the required yard along each such lot line shall be a required front yard. The owner shall decide which of the remaining yards shall be required side yard and the required rear yard.

4.502 Side Yards for Row Houses – Side yards for row houses shall be required at the ends of the row structure.

4.503 Double Frontage – For any through lot, fronting on two different streets, both frontages shall comply with the front yard requirements of the district in which it is located.

4.504 Obstructions at Street Intersections – On a corner lot in any district, no fence, wall, hedge or structure shall be so located so as to limit visibility at a street intersection. In general, no such item with a height of over two and one-half feet and a width or length of over three feet shall be allowed within the triangular area formed by the intersecting street lines for a distance of 30 feet from the intersection.

4.505 Only one accessory building per lot will be allowed. One accessory building, under 12' X 12' in size, may be placed within the required rear or side yards. Said accessory building must be located a minimum of 3' from the property line.

4.506 Junk Yards – All junk yards shall comply with the Town of Middleburgh Automobile Junk Yard Ordinance, and shall further provide, in all junk yards as defined in this law, proper fencing, distance from highways and other establishments, and shall be licensed by the Town of Middleburgh. Junkyards are only permitted by special use permit in the C districts.

#### 4.6 Signs

All signs hereafter constructed, erected, or otherwise established, moved, altered or changed within the limits of the Town of Middleburgh shall comply with the following regulations:

4.601 Outdoor Advertising Signs – Outdoor advertising off-premises signs are permitted in the districts as designated on the Use Schedule subject to the following restrictions:

- (a) Off-premises Outdoor Advertising signs are permitted only along State Highways.
- (b) No off premise outdoor advertising signs shall be located less than 350 feet from any such highway right-of-way.
- (c) No off-premise outdoor advertising signs shall exceed 300 square feet.
- (d) Off-premise outdoor advertising signs are restricted to signs erected for the purpose of advising a traveler of the availability and location of a service or attraction within the nearby area. Specifically, off-premises outdoor advertising signs are prohibited from advertising such products as beer, gasoline or cigarettes, which are not unique to the Middleburgh area, regardless of the fact that such products may be sold in the Town and Village of Middleburgh.
- (e) Temporary signs and banners: Political signs are considered temporary signs. All political signs must be removed within seven (7) days after an election and may be erected or placed not more than ninety (90) days prior to the election. Banners advertising an event or an activity are considered temporary signs and are permitted as such, and must be removed within three (3) days after the event advertised and may be erected or placed not more than thirty (30) days prior to the event advertised. Banners advertising a product for special promotional sales are also considered temporary signs and must be removed within three days after the promotional sale and may be erected or placed no more than seven (7) days prior to the advertised promotional sale.

- (f) All outdoor advertising signs, if not maintained for a period of 90 days or more, shall be removed at the landowner's expense.
- 4.602 Signs in Residence Districts – On-premise Signs in any residential district or in connection with any residential building in any other district shall not exceed 8 square feet in area. No more than one such sign shall be permitted. Flashing lights are not permitted.
- 4.603 Business Signs and Professional Signs in Commercial or PDD Districts – On premise business signs and Professional signs in business districts are permitted provided such signs or lettering contain only the name or names of the lawful owners or occupants or their trade marks and shall identify only the business, profession, general goods or services and conducted or dispensed on the premise.
- (a) The total area of any sign shall not exceed 100 square feet.
  - (b) Colored lights of such shape and hue that may be confused with official traffic lights and signals shall be prohibited. Unlighted signs that can be confused with traffic control devices are also prohibited. No flashing lights are permitted.
  - (c) Such signs shall not exceed two in number for each property.
  - (d) The maximum combined area of both signs permitted on each property shall not exceed 150 square feet.
- 4.7 Off-street Parking
- (a) Parking Areas in Residential Districts – No open or enclosed parking area shall encroach on any required yards or required open areas.
  - (b) Parking Areas in Planned Development Districts – Open parking areas may encroach on a required side or rear yard to within three feet of a side or rear lot line. Non-attendant operated parking lots shall allow 300 square feet per parking space per vehicle. No parking space or access thereof, except entrances or exit drives, as limited in this section, shall be within 15 feet of a street right-of-way line. Entrance or exit drives connecting the parking area and the street shall be permitted within the 15-foot strip required above, provided:
    - (1) No entrance or exit shall exceed 25 feet in total width.
    - (2) Drives shall have clear visibility at their intersection with the street.
    - (3) There shall be at least 40 feet between access drives and between access drives and the right of way lines at a street intersection.

- (c) Parking Areas in Planned Development Districts – No parking area shall encroach on any required front yard. Open parking areas may encroach on any required side or rear yard to within 15 feet of a side or rear lot line.
- (d) Required Parking Spaces – No required off-street parking space shall be used for storage, servicing, or dismantling of automobiles or other vehicles, loading or unloading except as provided elsewhere in this Section 4.7.
- (e) Landscaping – Parking lots for more than 20 cars shall be provided with landscaped areas amounting to an aggregate minimum of 5 percent of the total paved area of the parking lot. Each landscaped area must be at least 30 square feet and shall be adequately maintained.
- (f) Required Screening – Open off-street parking or loading areas shall be screened from adjoining residential lots by walls, fences, or hedges of sufficient height to prevent the viewing of parked vehicles by a line of sight originating 5 feet above any point on the minimum side or rear yard setback line of such adjoining residential lots.

#### 4.8 Off-street Loading

All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Each required loading berth may be open or enclosed and shall have the minimum dimensions: 35 feet long, 12 feet wide, 14 feet high. Open off-street loading areas shall not encroach on any required front or side yard, off-street parking area, or access-way. All uses with at least 5,000 square feet of floor space shall have at least one loading space.

#### 4.9 Activity Standards for Noisome and Injurious Substances, Conditions, and Operations

The following activity standards shall apply in all districts except with respect to normal farm uses which include, but are not limited to, forestry use tools, crop harvesting, feed lot operation, etc.

- (a) Vibration – No vibration shall be discernible at the lot lines or beyond.
- (b) Smoke – No emission of dense smoke.
- (c) Odors – No offensive odors shall be noticeable at the lot lines or beyond.
- (d) Fly Ash, Dust – No emission which can cause any damage to health, animals, or vegetables or other forms of property or any excessive soiling.

- (e) Liquid or Solid Wastes – No discharge into any present or future disposal system, public or private, or streams or into the ground, of any materials of such nature or temperature as to contaminate ground water supply.
- (f) Radioactivity – No activities which emit dangerous radioactivity at any point, as covered by Federal Government Standards.
- (g) Noise – No continuous hum, intermittent noises or shrills noise noticeable at lot lines.
- (h) Fire and Explosion Hazard – No process or storage of materials in such manner as to create undue hazard by reason of fire or explosion.

## **ARTICLE V**

### **NONCONFORMING BUILDINGS, USES, AND ACTIVITIES**

#### **5.1 Continuation of Existing Uses**

The lawful use or bulk of any building, land use or activity in existence on the effective date of this law may continue although not in conformity with this law, except as otherwise provided in this Article.

#### **5.2 Maintenance and Repair**

Normal maintenance and repair of a nonconforming building including the restoration of a building declared unsafe by proper authority to a safe condition and the repair of a building damaged by fire or other cause, is permitted as long as the degree or extent of nonconformity is not increased or exceeded or no new nonconformity is created.

#### **5.3 Reconstruction and Restoration**

If a nonconforming building or land use activity or part thereof has been destroyed or damaged by any means it may be rebuilt or restored as a nonconforming building or use only if reconstructed or restored with the same or less floor area, height, and cubic content and with the same, or an improved, general site layout as that of the original structure. Board of Appeals approval of reconstruction and restoration plans shall be required and the Board of Appeals may impose conditions on such approval if such conditions would improve an otherwise bad situation and bring the nonconforming use or activity more in conformity with the regulations for the district in which it is located.

#### **5.4 Changes**

A nonconforming use may be changed to another nonconforming use only by variance granted by the Board of Appeals. A nonconforming use may be changed to a conforming use but shall not thereafter revert to a nonconforming use.

#### **5.5 Abandonment or Discontinuance**

Abandonment or discontinuance of any nonconforming use or activity for a period of 12 consecutive months or for a total of 20 months during any 3-year period shall terminate such nonconforming use of the building and premises. No such nonconforming use shall be in conformance with the provisions of this law for the area in which such building or premises is located. The date of abandonment or discontinuance of a nonconforming use shall be determined by the Enforcement Officer and notification of such action shall be made in writing to the property owner with a copy to the Town Clerk. The Board of Appeals may

grant extension of the termination date of such nonconforming use for an additional 6 months after a public hearing.

## 5.6 Public Properties

This Law is not intended to restrict the construction or use of public buildings or lands or property supported in part or in whole by taxes on property in the Town of Middleburgh in the exercise of a governmental function. This Law is not intended to restrict the construction or use of underground or overhead public utility distribution facilities or of other public utility structures operating under the laws of the State of New York, except as otherwise provided in this Law, and except that any such structures shall conform in character to the environment in which erected. Telecommunications Facilities are considered public utilities when needed by a licensed public utility and the Town of Middleburgh recognizes the need for such services. However, telecommunications facilities require a special use permit as outlined in Attachment III Section 7.7.

## 5.7 Lot in Different Districts

If a lot is divided by a zoning district boundary, one of the following conditions shall apply:

- (a) the respective district regulations shall apply to each portion of the lot so divided, or
- (b) the regulations of the more restrictive district may be applied to the entire lot, or
- (c) The Board of Appeals may establish requirements within the intent of this Law, which represents a compromise between the requirements of the districts, involved, and which are approximately proportional to the area of the lot that lies within each different district. In no case shall such requirements be less restrictive than the regulations in the least-restrictive district.
- (d) The least-restrictive district shall be determined by the number of permitted uses in each zone. The greater the number of uses, the less restrictive the zoning district shall be determined to be.

## 5.8 Buildings on small lots

Notwithstanding the limitations imposed by any other provision of this law, any lot held in single and separate ownership prior to May 1, 1978 and whose area or frontage is less than the specified minimum lot requirements of this law for the district may be considered as complying with such minimum lot requirements, and no variance shall be required for the issuance of a building permit, provided that:

1. Such lot does not adjoin any other lot or lots held by the same owner, whose aggregate area is equal to or greater than the minimum lot area required for that district.
2. All other bulk requirements for that district are in compliance.
3. In any district where residences are permitted, such undersized nonconforming lots may be used for not more than one (1) single-family dwelling.
4. Lots smaller than six thousand (6,000) square feet and/or with less than fifty (50) feet of lot width are prohibited building lots.

#### 5.9 Regulation of Temporary Storage Units

- A. Purpose and intent. The following regulation has been adopted to ensure that placement of temporary storage units, commonly known as PODS (portable on-demand storage), complies with the health, safety, and aesthetic objectives of the Town.
- B. Placement. Temporary storage units may be placed on property in any zone and no permit shall be required and no zoning regulations shall apply other than those enumerated in this Section.
- C. Duration. A temporary storage unit may be placed on property in any zone for a period of thirty consecutive days without a fee. Then only one extension may be granted for an additional thirty consecutive days by the Enforcement Officer for a fee set by the Town Board.
- D. Location.
  1. The temporary storage unit shall be placed in the least conspicuous location available to minimize disturbance to any adjoining residential properties.
  2. The temporary storage unit shall not be located in any public right-of-way.
  3. The temporary storage unit shall not be located in any front yard, unless it is the only practical location.
  4. The temporary storage unit shall not be located in or impede the use of any shared parking area, loading area, aisle, or driveway.
- E. Number of units. Only one temporary storage unit may be placed at any residential property at one time.

F. Other Conditions. The applicant, as well as the supplier, shall be responsible for ensuring that the temporary storage unit is maintained in good condition, free from evidence of weathering, discoloration, graffiti, rust, ripping, holes or breaks at all times. deterioration, tearing or other

No temporary storage unit shall be used to store waste, construction debris, demolition debris, recyclable materials, business inventory, commercial goods, or any personal property other than for the residential property where the temporary storage unit is located or any other illegal or hazardous material. Upon reasonable notice to the applicant, the Town of Middleburgh may inspect the contents of any temporary storage unit at any reasonable time to ensure it is not being used to store said materials. At no time shall a temporary storage unit be used for any of these purposes or used for advertising purposes.

G. Penalties for offenses. Any person who shall violate any provision of this law shall be guilty of a violation as defined in Article 10 of the Penal Law and shall, upon conviction, be subject to a fine of not more than \$250 or to imprisonment for not more than 15 days, or both such fine and imprisonment. Each week's continued violation shall constitute a separate and distinct offense.

H. Civil proceedings. Compliance with this law may also be compelled and violations restrained by order or by injunction of a court of competent jurisdiction. Any person who violates any provision of this law shall also be subject to a civil penalty of not more than \$500, to be recovered by the Town in a civil action, and each week's continued violation shall be for this purpose a separate and distinct violation.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

#### 6.1 Compliance with Law

All applicable buildings shall hereafter be used, occupied, constructed, located, relocated, or enlarged, and all applicable land shall be used or occupied only in compliance with the provisions of this law. Notification of public hearings for a use variance, special use permit, site plan or subdivision review occurring within 500' of an adjacent municipality shall be made to the clerk of such municipality by mail or electronic transmission at least ten (10) days prior to the hearing.

#### 6.2 Precedence

Wherever any other lawful statute, ordinance, regulation, easement, private agreement, covenant, deed restriction, or other legal relationship – public or private –imposes controls which are inconsistent with any provision of this law, then those provisions which are the more restrictive or impose higher standards shall take precedence.

#### 6.3 Existing, Prior Permits, Certificates and Variances

If by reason of an amended or supplementary provision of this Law a nonconforming property is created for which a building permit, certificate of compliance, variance, or special use permit was issued prior to the effective date of such amended or supplementary provision, than the afore-mentioned permit, certificate, variance, or special use permit shall become null and void unless one of the following conditions is met:

- (a) All footings have been installed, or
- (b) Substantial construction or progress in accordance with required conditions has been made and is continuing as of the effective date of such amended or supplementary provisions.

#### 6.4 Remedies

If any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or if any building, structure, or land is used in violation of this law or of any regulation adopted pursuant thereto, any appropriate action or proceeding, whether by legal process or otherwise, may be instituted or taken in addition to other remedies provided by law, to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance, or use; to restrain, correct, or abate such violation; to prevent the

occupancy of said building structure, or land; or to prevent any illegal act, conduct, business, or use in or about such property.

#### 6.5 Separate Validity

If any part or provision of this law is adjudged invalid or unconstitutional by any court of competent jurisdiction, such judgement shall be confined in its effect to the part, provision, or application directly involved and shall not affect or impair the validity of the remainder of this law.

#### 6.6 Effective Date

This Law together with the appurtenant official Zoning Map shall take effect immediately, upon filing with the Secretary of State.

**Attachment I  
District Regulations – Area Schedule**

District		Minimum Lot Size		Minimum Yard Space per Principal Building			Maximum Building Height (ft.)
		Area (sq. ft.)	Frontage (ft.)	Set back Measured from R.O.W. (ft.)*	Side (ft.)	Rear (ft.)	
R-1	High Density Residential	20,000	85	55	20	35	30
R-2	Medium Density Residential	43,560	100	55	25	50	35
R-3	Low Density Residential	87,120	200	75	25	50	35
C	Commercial	43,560	200	80 300 for fuel storage and distribution	30	50	35
PDD	Planned Development District	Floating district Must have approval Of planning board					
FPD	Flood Protection District	871,200	200	75	25	50	35

\*Distance of set back shall be measured from edge of highway or shall be specified distances plus 25 feet measured from the highway centerline.

A minimum of 10% greenspace is required for all lots.

**ATTACHMENT I**  
**District Regulations – Use Schedule**

District		Permitted Uses *	Special Uses *	District		Permitted Uses *	Special Uses *
R-1	High Density Residential	1. one family dwellings 2. two family dwellings 3. accessory uses to any permitted uses 4. home occupations 5. manufactured homes	1. hospitals, churches and places of worship 2. public parks and playgrounds 3. public or private schools 4. other municipal facilities 5. multiple dwellings 6. telecommunications facilities	C	Commercial	1. one family dwellings 2. two family dwellings 3. accessory uses to any permitted use 4. home occupations 5. manufactured homes 6. public and quasi-public uses, places of worship, schools, parks, playgrounds, government facilities and public utility facilities 7. farms and agricultural uses, including temporary stands for the sale of agricultural products 8. forest management areas 9. recreation buildings or areas operated by membership, clubs for the benefit of their members and not for financial gain. 10. Outdoor advertising signs	1. gift shop or antique shop 2. professional office, business office, bank 3. retail stores and shops 4. restaurants 5. hotel and motel 6. night club 7. veterinarian office, animal hospital 8. gasoline filling station 9. car wash equipment 10. equipment storage, trailer rental or sales yards 11. wholesale businesses or services 12. laundry or dry cleaning plant 13. greenhouses 14. sales and servicing of agricultural equipment 15. auto sales and related services 16. salvage/junkyard 17. telecommunications facilities 18. hospital 19. multiple dwellings 20. research laboratories 21. manufacture, fabrication, extraction, assembly, warehousing and other handling of materials 22. excavation and mining 23. fuel storage and distribution
R-2	Medium Density Residential	1. one family dwellings 2. two family dwellings 3. public and quasi-public uses, places of worship, schools, parks, playgrounds, government facilities and public utility facilities 4. accessory uses to any permitted uses 5. home occupations 6. manufactured homes	1. recreation buildings or area operated by membership, clubs for the benefit of their members and not for financial gain 2. cemetery 3. hospital 4. multiple dwellings 5. telecommunications facilities				
R-3	Low Density Residential	1. one family dwellings 2. two family dwellings 3. manufactured homes 4. farms and agricultural uses, including temporary stands for the sale of agricultural products grown on the premises 5. public and quasi-public uses, places of worship, schools, parks, playgrounds, government facilities and public utility facilities 6. forest management areas 7. accessory uses to any permitted uses 8. home occupations	1. places of outdoor public assembly or amusement, camps campgrounds 2. parks 3. apartment dwellings for the exclusive occupancy of persons employed by a permitted agricultural use. The number of such apartment dwelling units shall not exceed one for every two acres of land in active agricultural use. 4. manufactured home parks 5. multiple family dwellings 6. temporary farm produce stands for the sale of agricultural products not grown on the premises 7. telecommunications facilities 8. excavation and mining, limited to 750 cubic yards or less per year.				
				PDD	Planned Development District	All uses must have approval of planning board	
				FPD	Flood Protection District	1. one family dwelling 2. farms and agricultural uses development must abide by district standards plus the supplementary regulations of the FPD	

All permitted uses, special uses and other zoning approvals require a zoning certificate of compliance.

All uses not listed as permitted or special uses in a district shall be considered prohibited uses.

## ATTACHMENT II

### Definitions

#### 1.0 DEFINITIONS

Except where specifically defined herein, all words used in this law shall carry their customary meanings.

*Accessory Building:* A building subordinate to the principal building on the same lot and used for purposes customarily incidental to those of the principal building.

*Accessory Use:* A use customarily incidental and subordinate to the principal use of the building on the same lot with such principal use or building.

*Agricultural Data Statement:* An identification of farm operations within an agricultural district as provided in Section 305-a of the Agriculture and Markets Law.

*Agricultural Products:* Products grown or produced on a farm or in a garden and minimally processed for resale.

*Alteration:* As applied to a building or structure, a change or rearrangement in the structural parts or exterior appearance of such structure, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving from one location or position to another.

*Applicant:* Any person, corporation, or other entity applying for a Building Permit, Certificate of compliance, Special Use Permit, Site Plan approval, Variance, or Zoning Amendment.

*Basement:* A story partly underground but having at least one-half of its height above the average level of the adjoining ground. A basement shall be counted as a story for the purposes of height measurement if the vertical distance between the ceiling and the average level of the adjoining ground is more than five feet or if used for business or dwelling purposes.

*Boarding or Rooming House:* Any dwelling in which more than three persons, either individually or as families are housed or lodged, except those engaged in farm work, for hire with or without meals.

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

*Building, Height of:* The vertical distance measured from the average level of the proposed finished grade across the front of the building to the highest point of the roof for flat roofs;

to the deck line of mansard roofs; and to the mean height between eaves and ridge for gambrel roofs.

*Building, Principal:* A building or structure in which is conducted the main or principal use of the lot on which it is located.

*Cellar:* A story wholly or partly below finished grade on at least three sides and having more than one-half of its height – measured from floor to ceiling – below finished grade. A cellar shall not be counted in determining the permissible number of stories.

*Center Line of Road:* A line midway between and parallel to two property lines along any public highway right-of-way. Whenever such property lines cannot be determined, such line shall be considered as being midway between and parallel to the paved or improved surface of the road.

*Comprehensive Plan:* The comprehensive plan adopted by the Town Board for the future development guidelines of the Town of Middleburgh pursuant to Section 272-a of the Town Law.

*Condominium:* A legal arrangement involving a combination of two kinds of ownership of real property.

- a) fee simple ownership of the individual dwelling unit; and
- b) undivided ownership of the structure, land and appurtenance, the management of which is controlled by the property owners, or like association.

*Coverage:* The lot area or percentage of lot area covered by the building or structure – including accessory buildings and structures.

*Dwelling:* A building designed or used principally as the living quarters for one or more families.

*Dwelling, One Family:* A detached dwelling unit providing complete housekeeping facilities designed for year-round occupancy by one family only, other than a manufactured home recreational living unit or any temporary structure.

*Dwelling, Two Family:* A detached building designed or occupied exclusively by two (2) families living independently of each other.

*Dwelling, Multiple:* A building or portion thereof designed for year-round occupancy, containing separate dwelling units for three or more families living independently of each other, other than a rooming house, hotel, fraternity, commune or other group quarters.

*Dwelling, Seasonal:* A detached one-family dwelling unit providing complete housekeeping facilities for one family designed for seasonal or non-year-round occupancy other than a manufactured home, recreational living unit or any temporary structure.

*Dwelling Unit:* A building or portion thereof providing complete housekeeping facilities for one family.

*Enforcement Officer:* The duly designated official responsible for enforcing this Law as prescribed herein and as directed by the Town Board.

*Family:* A “family” consists of one or more persons who live together in a single dwelling unit and maintain a common household.

*Farm Structure/Use:* The management and use of land for the raising for compensation of agricultural products, including field crops, produce, horticultural, livestock and dairy products. The term includes the sale of products grown or raised directly on such land, and the necessary buildings and appurtenant construction such as barns, silos and fences which are a normal part of such operation.

*Flood Plain or Flood Prone Areas:* A land area adjoining a river, stream, watercourse, ocean, bay or lake, which is likely to be flooded.

*Floodplain, regulated:* The land area covered by the floodwaters of the base flood or the Special Flood Hazard Area (SFHA) on Flood Insurance Rate Maps (FIRM). The SFHA is the area where the Town of Middleburgh Flood Damage Prevention Law must be enforced and the area where the mandatory purchase of flood insurance for mortgages applies. The SFHA includes Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A. The SFHA does not include X Zones.

*Floor Area:* When computing the minimum residential floor area, the gross horizontal area of the principal building shall be used, not the sum of the several floors. When computing commercial or industrial floor area in regard to required parking space, only sales space and working space shall be computed.

*Forest Management:* Management of land using a cycle of decisions and events between planting and harvesting of trees for financial gain or personal use.

*Frontage:* That side of a lot or building abutting on a public street or private road.

*Garage, Private:* A roofed space for the storage of one or more motor vehicles, provided that no business conducted for profit therein nor space therein for more than one car is leased to a non-resident of the premises.

*Garage, Public:* An enclosed building which is operated for gain and whose primary purpose is the storage, repair, or servicing of motor vehicles, including painting and the sale of parts or accessories. A junkyard or auto salvage yard is not to be construed as a garage (Public).

*Garden Apartment:* A building or group of buildings of not more than tree stories in height which are constructed upon landscaped grounds.

*Gasoline Station:* Any area of land, including structures thereon that is used or designed to be used for the sale of gasoline or oil or other motor vehicle fuel and which may include facilities for lubricating, washing, cleaning, or otherwise servicing motor vehicles, but not including the painting or major repair thereof. The term “Gasoline Station” shall be deemed to include filling station and service station.

*Home Occupations:* An accessory use of a service or commercial character conducted within a dwelling unit by the residents thereof, which is clearly secondary to the use of the dwelling unit for living purposes, and which is not detrimental to the residential character of the lot on which said home occupation is located or of the surrounding neighborhood. Two additional persons, not a resident thereof, may be employed in such home occupation. A home occupation shall not be such as to produce offensive noise, traffic, smoke, dust, odor, heat, glare, or electronic disturbance beyond the property it occupies. A business that neither generates visits, nor requires a sign, is not a home occupation per this law.

*Hotel/Motel/Tourist Accommodation:* A building or group of buildings where overnight transient guests are lodged overnight and designed primarily to accommodate the motoring public. Such uses may include accompanying eating, drinking and related sales uses so long as a minimum of fifteen (15) operating rental units are provided and further, that any such ancillary service uses are directly related and secondary to the principal function of overnight sleeping accommodations. The word ‘motel’ includes ‘motor court’, ‘tourist cabins’, ‘motor lodge’ and similar descriptive titles.

*Hydrology:* The science dealing with the waters of the earth, including their distribution on the surface and underground, and the cycle involving evaporation, precipitation, flow, etc.

*Junk Yard:* A lot, land or structure or part thereof, used for the collecting, storage, or sale of waste paper, rags, scrap metals, used or salvaged building or other discarded material, or for the collecting, dismantling, storage and deposit, whether in connection with another business or not, where two or more unlicensed, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways, are held, whether for the purposes of resale of used parts or materials therefrom or not. Such term shall include any place of storage or deposit for any purpose of used parts or waste materials from motor vehicles which, taken together equal in bulk two (2) or more such vehicles.

*Lot:* A parcel of land separately recorded in the Schoharie County Clerk’s Office, or separately depicted on the Tax Maps. Whenever two or more principal buildings are located on a single lot, the area devoted to each principal building together with its accessory buildings and uses, yards and open space, shall be considered as a separate lot for the purpose of this Law.

*Lot, Area:* The total area included within side and rear lot lines and the street or highway right-of-way line.

*Lot, Corner:* A lot situated at the junction of and adjacent to two or more intersecting streets when the interior angle of intersection does not exceed 135 degrees.

*Lot, Depth:* A mean distance between the front and rear lot lines, measured in the general direction of the side lot lines.

*Manufactured Home:* A factory finished movable dwelling unit, having a minimum floor area of 500 square feet, designed for and providing housekeeping facilities for year-round or seasonal occupancy after being transported to the living site. It does not include a recreational living unit or modular home, but may include such expandable or joined mobile units referred to as “telescoping” and “doublewides”. Manufactured homes constructed after July 15, 1976 display a HUD seal or data plate to verify proper construction.

*Manufactured Home Park:* A parcel of land, which has been planned and improved for the placement of three or more manufactured homes for non-transient use. The manufactured home park may also include a launderette intended solely for the use of the manufactured home park residents.

*Middleburgh, Town of:* All that area within the geographical boundaries of the Town of Middleburgh exclusive of that area within the incorporated Village of Middleburgh.

*Modular Home:* A factory manufactured dwelling unit constructed to New York State Building Code standards and requiring no HUD seal or data plate. Modular homes are typically constructed offsite and transported to a living site in a minimum of two sections, with installation of many finishing components coming after erection of the home. Modular homes are typically indistinguishable in appearance from conventionally built homes.

*Motor/Recreational Vehicle:* Any passenger, recreation or service vehicle propelled by a fuel-using device, including but not limited to automobiles, trucks, motorcycles and motorbikes, dune buggies, snowmobiles, tractors, motor boats and all terrain vehicles.

*Night Club:* An establishment operated primarily at night for eating, drinking, and dancing.

*Nonconforming Lot:* Any lot in single ownership, which does not conform to the minimum area and/or dimensions required in the district in which it is situated and where the owner of said lot does not own any adjoining unimproved property, the subdivision of which could create one (1) or more conforming lots.

*Nonconforming Use:* Any use of a building, other structure, or tract of land, otherwise lawfully established but which does not conform to the regulations of the district in which such use is located, either at the effective date of this law or as a result of subsequent amendments thereto.

*Outdoor Advertising Signs:* A sign erected (off-premises or on-premises) for the purpose of advising a traveler of the availability and location of a service or attraction within nearby area.

*Parking, Off-Street:* An area of at least 200 square feet with minimum dimensions of 9 feet and 18 feet. This area is to be either a paved or a dust and mud-free surface (not a lawn area) which shall be located outside of any public right-of-way.

*Planned Development:* A tract of land which is developed as a unit with a grouping of residential, commercial, or industrial buildings together with their accessory buildings and all appurtenant roadways, parking areas, loading spaces, and service buildings and facilities. Such tract shall be at least 3 acres in size. (A planned development shall involve a detailed plan review and a zoning amendment shall be required).

*Premises:* A lot together with all the buildings and uses thereon.

*Professional Office:* The offices of a duly licensed doctor, dentist, lawyer, engineer, architect, insurance broker, real estate broker or similar profession.

*Public Highway:* An existing public way which affords principal means of access to abutting properties and is suitably improved by all appropriate official agencies.

*Public Highway Line:* A line, commonly referred to as the right-of-way line, which separates a street right-of-way from a lot.

*Restaurant:* A building or portion thereof where food and beverages, whether or not alcoholic, are sold to the public for consumption on the premises.

*Retail Stores and Shops:* Structures used solely for the sale of goods or articles individually or in small quantities directly to the consumer.

*Right-of-way (R.O.W.):* The right-of-way is the total public strip of land within which there is public control and common right of passage and within which all pavements and utility lines are located. All setbacks will be measured from the right of way or 25 feet from centerline plus set back specified.

*Setback:* The shortest horizontal distance in feet from the street line to the principal building on a lot.

*Sign:* A device that directs attention to a business, commodity, service, or entertainment. (Also see "Outdoor Advertising Sign").

*Sign Area:* The area within the shortest lines that can be drawn around the outside perimeter of a sign including all decorations and lights, but excluding the supports if they are not used for advertising purposes. Any neon tube, string of lights, or similar device shall be deemed to have a minimum dimension of 1 foot.

*Special Use:* A use that would not be appropriate generally or without restriction throughout the zoning district, but which, if controlled as to number, area, location, or relation to the neighborhood may be permitted if specific provision for such special use is made in the Regulations, after application to and authorization by the Planning Board of a Permit thereof.

*Story:* The section of a building between the surface of a floor and the surface of a floor next above or below – whether or not counted for purposes of computing floor area ration. (See “Basement” and “Cellar”)

*Substantially Change:* To substantially change from one use to another generally involves, but is not limited to, a change that potentially increases existing parking requirements or alters existing traffic flow, involves placement of larger outdoor waste disposal equipment, or creates new emissions. For example, although both are commercial to commercial changes, a gift shop changing to a music store would not necessarily be considered a substantial change whereas a gift shop to restaurant shall be.

*Telecommunications Facilities:* Any one or combination of antennas, buildings, structures, roads, fences, etc...assembled on a site and used in conjunction with telecommunication towers including, but not limited to, personal wireless service and/or commercial mobile service networks and/or Digital Television (DTV), High Definition Television (HDTV), and Advanced Television (ATV).

*Telecommunications Towers:* Any structure greater than thirty-five (35) feet in height, which is capable of receiving and/or transmitting signals (for the purpose of communications) including, but not limited to, lattice towers, guyed towers, monopoles and similar structures which may employ camouflage technology. Not including antennas and equipment for citizen band operation and amateur receiving/operation.

*Temporary stands for the sale of agricultural products:* Stands that are used 6 months or less during any year which have no permanent structural components. (Permanent stands or stands used for more than 6 months during any year shall be considered retail stores.)

*Temporary Storage Unit* – Any container, storage unit, shed-like container, or other portable structure that can be or is used for the storage of personal property of any kind and which is located for such purposes outside an enclosed building. An accessory building, shed, or carport/RV port complying with all building codes and land use requirements shall not be considered a temporary storage unit.

*Travel or Camping Trailer:* A vehicular portable structure designed to be used as a temporary dwelling for travel, recreation, and vacation uses.

*Truck Terminal:* Any area of land including the structures thereon that are used or designed to be used for the parking or storage of commercial trucks.

*Use:* This term is employed in referring to:

- (a) The purpose for which any buildings, other structures, or land may be arranged, designed, intended, maintained or occupied; or
- (b) Any occupation, business activity, or operation conducted (or intended to be conducted) in a building or other structure, or on land.

*Used Car Lot:* An area with or without buildings used for the sale and display of second-hand vehicles.

*Vacation Home:* A residence used on seasonal basis.

*Yard (Required):* That portion of the open area of a lot extending open and unobstructed from the ground upward, along a lot line for a depth or width as specified by the bulk regulations of the district in which the lot is located. No part of such yard shall be included, as part of a yard or other open space similarly required for another building on another lot.

*Yard (Front):* An open space between the front line of the principal building and the front line of the lot and extending the full width of the lot.

*Yard (Rear):* An open space between the rear line of the principal building and the rear line of the lot and extending the full width of the lot.

*Yard (Side):* A yard situated between the building and the sideline of the lot and extending from the front yard (or from the front lot line, if there is no required front yard) to the rear yard (or rear lot line). The width of a side yard shall be measured from the side lot line towards the building.

*Variance:* Written authority to deviate from any of the regulations of the law, said authority to be granted by the Town of Middleburgh Board of Appeals in accordance with the provisions of law and of this law.

## ATTACHMENT III

### ADMINISTRATION

#### 1.0 ENFORCEMENT OFFICER

This law shall be enforced by the Enforcement Officer, who shall be appointed by the Town Board. He shall issue no building permit or certificate of compliance except where all the provisions of this law have been complied with.

#### 1.1 ENTRY AND INSPECTION

- (a) After requesting permission of the owner, the Enforcement Officer shall have the right to enter upon, examine and inspect or cause to be entered, examined and inspected – any building or property at any reasonable time for the purpose of carrying out duties and to determine compliance with the provisions of this law. Request for permission to inspect, will normally be made verbally, but in case such a request is refused, the request will then be granted within one week of date of delivery or date of mailing of the request, at a time of owner's conveniences, or the matter will be handled in accordance with due process of law. Inspection of the interior of a building will normally be required only when the owner has indicated a change of use or where there is good cause to believe a change of use is being accomplished. A written report of each such examination and inspection shall be prepared on any appropriate form and kept on file by the Enforcement Officer.
- (b) No modification to any existing building or structure shall be made that will infringe on the requirements of the District Regulations Schedule pertaining to maximum percentage of lot occupied, minimum floor area, maximum height of principal buildings, or setback, or that would increase infringement of buildings and structures already non-conforming in this regard until a permit has been issued by the Enforcement Officer after approval by the Board of Appeals.

#### 1.2 VIOLATIONS

Whenever in the opinion of the Enforcement Officer after proper examination and inspection, there appears to exist a violation of any provision of this law, or of any rule or regulation adopted pursuant thereto, he shall serve a written notice of violation upon the appropriate form.

#### 1.21 NOTICE OF VIOLATION

Such notice of violation shall inform the recipient of:

- (a) the nature and details of such violation

- (b) recommend remedial action which if taken will effect compliance with the provisions of this law and with rules and regulations adopted pursuant thereto;
- (c) the date of compliance by which the violation must be remedied or removed.

## 1.22 EXTENSION

The Enforcement may extend the date of compliance specified in a notice of violation after written application, if in his opinion there is reasonable evidence of intent to comply and that reasonable conditions exist which prevent compliance by the specified date.

## 1.23 EMERGENCY ACTION

If in the opinion of the Enforcement Officer a violation exists which requires immediate action to avoid a direct hazard or imminent danger to the health, safety, or welfare of occupants of a building or to other persons he may order such violation immediately remedied, or may take direct action on his own initiative to abate the hazard or danger. The owner, occupant or person responsible for the violation shall pay for any costs incurred by such action. The Enforcement Officer shall keep on file an affidavit stating with fairness and accuracy the items of expense and date of execution of action taken, and he is furthermore authorized to institute a lawsuit, if necessary, against the person liable for such expense or place a lien against his property, in order to recover the costs.

## 1.24 CERTIFICATE OF ZONING COMPLIANCE

On reinspection following the expiration of the date of compliance as specified in the notice of violation, if the violation has been remedied or removed in accordance with the specified remedial action and there is no longer a violation of any provision of the Law then a certificate of zoning compliance shall be issued by the Enforcement Officer.

## 1.25 PENALTIES

A violation by a person of any of the provisions of this law, after notice of violation, shall be enforced by:

Civil penalties

1. For a first violation, a civil penalty not exceeding \$350.00;
2. For a second violation, provided both the first and second violations occurred within a period of 5 years, a civil penalty of not less than \$350.00 nor more than \$700.00; and
3. For a third or subsequent violation all of which occurred within a period of 5 years, a civil penalty of not less than \$700.00 nor more than \$1,000.00;
4. Each week's continued violation shall constitute a separate additional violation, for which separate and additional civil penalties may be imposed and recovered;
5. No remedy provided for enforcement is intended to be exclusive and the Town reserves the right to enforce this law by an action for injunction.

The term “person” as used in this section shall include an owner, occupant, mortgagee, tenant, vendee in possession, assignee of rents, receiver, executor, trustee, lessee, agents, or any other person, firm or corporation directly or indirectly in control of a building, property, or part thereof.

### 1.3 BUILDING PERMITS

- (a) No building or structure shall be erected until a permit therefore has been issued by the Enforcement Officer. Except upon a written order of the Board of Appeals, no such building permit or certificate of compliance (see Section 1.4 of Attachment III) shall be issued for any building where said construction or use thereof would be in violation of any provision of this law.
- (b) No modifications to any existing building or structure shall be made that will infringe on the requirements of the District Regulations Schedule pertaining to maximum % of lot occupied, minimum floor area, maximum height of principal buildings and structures already non-conforming in this regard until a permit has been issued by the Enforcement Officer. No certificate of compliance shall be granted for a building of structure modified as above without a written order of the Board of Appeals.
- (c) Ordinary maintenance to a conforming or existing non-conforming building or structure, or improvements to same which do not result in infringement under the category of (b) above do not require the approval of Enforcement Officer.
- (d) There shall be submitted with all applications for new building permits two (2) copies of a layout or plot plan drawn to scale showing the actual dimensions of the lot to be built upon, the exact size and location on the lot of the building and accessory buildings to be erected, and such other information as may be necessary to determine and provide for the enforcement of this law.
- (e) Modifications to existing buildings and structures which would result in infringement to the law as noted in (b) above must be handled as a variance shall be accompanied by two (2) copies of a layout or hand drawn sketch approximately to scale showing clearly the degree to which the modifications will violate the terms of the law.
- (f) All applicants must conform to regulations in Attachment I.

### 1.4 CERTIFICATE OF COMPLIANCE

No land shall be used or occupied and no building hereafter erected, altered or extended shall be used or occupied until a certificate of compliance shall have been issued by the Enforcement Officer stating that all applicable provisions of the law have been adhered to.

## 1.5 FEES

The Enforcement Officer shall issue building permits and certificates of compliance where compliance is made with the provisions of this law and except on written order of the Board of Appeals, refuse to issue the same in the event of noncompliance, giving prompt written notice of such refusal and then reason therefore to the applicant.

The fees for each permit shall be as set by the Town Board.

## 1.6 HEALTH DEPARTMENT REQUIREMENTS

No building permit or certificate of compliance issued under the provisions of this Article shall become or remain valid unless the holder thereof has complied with the applicable rules and regulations of the Health Department of jurisdiction.

## **BOARD OF APPEALS**

### **2.0 BOARD OF APPEALS**

#### **2.1 GENERAL PROVISIONS**

##### **2.11 CREATION, APPOINTMENT AND ORGANIZATION**

A Board of Appeals is hereby created. The chairman and four additional members shall be appointed by the Town Board. The Board of Appeals shall choose its vice-chairman who shall preside in the absence of the chairman. The Board of Appeals shall appoint a secretary and shall prescribe rules for the conduct of its affairs.

##### **2.12 TERM OF APPOINTMENT**

After the initial appointments for terms as specified in Section 267 of Town Law, all terms shall be for five years, with the term of one Board member expiring each year. If a vacancy shall occur otherwise than by expiration of term, it shall be filled by appointment by the Town Board for the unexpired term.

##### **2.13 RULES OF PROCEDURE, BY-LAWS, FORMS**

The Board of Appeals shall have the power to make, adopt and promulgate such written rules of procedure, by-laws and forms as they may deem necessary for the proper execution of their duties and to secure the intent of this law. Such rules, by-laws and forms shall not be in conflict with, nor have the effect of waiving any provisions of this law or any other laws of the Town of Middleburgh.

##### **2.14 STAFF**

The Board of Appeals may employ such clerical or other staff assistance as may be necessary, and prescribe their duties, provided it shall not at any time incur expense beyond the amount of the appropriation made and then available for that purpose.

##### **2.15 MEETINGS**

All meetings of the Board of Appeals shall be held at the call of the Chairman. All meetings shall be open to the public. The Board of Appeals shall keep minutes of its proceedings, showing the vote of each member on every question, and shall keep records of all official actions. Every order, requirement, decision or determination of the Board of Appeals shall immediately be filed in the office of the Town Clerk and shall be a public record.

## 2.2 AUTHORITY

The Board of Appeals is governed by and shall act in strict accordance with procedures specified by the Town Law, this law, and its own duly-adopted rules, by-laws, and forms, and shall perform the following functions:

- (1) Decide any question properly brought before it involving the interpretation of any provision of this law.
- (2) Hear and decide appeals from any decision, determination, act, or failure to act of the Enforcement Officer, and all matters properly referred to it by the Enforcement Officer.
- (3) Hear and decide if variances to provisions of this law in accordance with Sections 2.5 and 2.6 (Attachment III, below) should be granted.

The Chairman of the Board of Appeals, and in his absence the acting chairman, may administer oaths and compel the attendance of witnesses at meetings and hearings.

## 2.3 APPEALS

- (1) Any person allegedly aggrieved by a decision, determination, act or refusal to act of the Enforcement Officer, may file an appeal with the Board of Appeals
- (2) The Board of Appeals may reverse, affirm, wholly or partly, or may modify any order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made in any case referred to it, and to that end shall have all the powers of the Enforcement Officer from whom the appeal is taken.
- (3) The concurring vote of a majority of the Board of Appeals shall be necessary to reverse any order, requirement, decision, or determination of the Enforcement Officer.

## 2.4 INTERPRETATION

The Board of Appeals, upon request, may interpret any provision of this law about which there is uncertainty, lack of understanding or misunderstanding, ambiguity, or disagreement, and shall determine the exact location of any zoning district boundary about which there may be uncertainty or disagreement.

## 2.5 USE VARIANCES

Where there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of this law, the Board of Appeals shall have the power to grant a variance in the application of any of the use regulations or provisions of this law in such a way that the

spirit of the law shall be observed and maintained, public health, safety, and welfare secured, and substantial justice done.

## 2.51 CRITERIA FOR GRANTING A USE VARIANCE

A variance to the use provisions of this law shall be granted by the Board of Appeals only if or whenever it finds that for each and every permitted and special use under the zoning regulations (Attachment I) for the particular district where the property is located:

- (1) the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence; and
- (2) that 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
- (3) that the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) that the alleged hardship has not been self-created.

## 2.52 REFERRAL OF USE VARIANCES

In addition to referrals in 3.3 below, all appeals for use variances shall be referred to the Planning Board. The Board of Appeals shall make no decision until such Planning Board review has been completed and a report issued. If the Planning Board fails to issue a report within 30 days the Board of Appeals shall assume that a favorable report has been issued.

## 2.6 AREA VARIANCES

Where there are practical difficulties or special conditions which make regulations governing lot size, yard size, building height, and all other regulations not specifically related to use of land or building, unreasonable or impossible to comply with, the Board of Appeals shall have the power to vary or modify these regulations as long as the spirit of the regulation to be altered is observed. In granting an area variance the Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the community by such grant. In making such determination the board must take into account the following factors:

- (1) 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;
- (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (3) whether the requested area variance is substantial;

- (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

## 2.7 FINANCIAL GAIN, CONDITIONS, COMPLIANCE FEES

### 2.71 FINANCIAL GAIN NOT A CRITERION

In no case shall a use or area variance be granted solely for reasons of additional financial gain on the part of the owner or occupant of the land or building involved.

### 2.72 CONDITIONS

In granting any variance the Board of Appeals may prescribe any conditions that it deems to be necessary or desirable. The Board of Appeals, in the granting of use and area variances, shall grant the minimum variance that it shall deem necessary and adequate.

### 2.73 COMPLIANCE WITH THE REST OF THE LAW

The granting of a variance to any provisions of this Law shall not obviate the necessity of complying in every other respect with the other provisions of this Law.

### 2.74 FEE

Each application to the Board of Appeals for a variance shall be accompanied by a fee set by the Town Board.

### 3.0 PROCEDURE FOR APPEALS

#### 3.1 APPEALS

All appeals and applications made to the Board of Appeals shall be in writing on forms prescribed by said Board and shall clearly set forth the interpretation that is claimed, or the details of the variance that is applied for and the grounds on which it is claimed that the variance should be granted, as the case may be.

#### 3.2 PUBLIC HEARING

The Board of Appeals shall after due notice hold a public hearing on every appeal or application for a variance in accordance with this law and the Town Law. The Board of Appeals shall have published a notice of each such hearing in a newspaper of general circulation in the Town of Middleburgh at least five days prior to such hearing.

The Board of Appeals shall have sent by registered mail the notice of the variance sought, to all property owners within 200 feet of the subject property. Such notices shall be sent to the last known address as shown by the most recent town tax records.

#### 3.3 NOTICES AND REFERRALS

##### 3.31

The Board of Appeals shall, at least 5 days prior to a public hearing, mail notices thereof to the parties and to the Regional State Park Commission having jurisdiction over any state park or parkway within 500 feet of the property affected by said appeal.

##### 3.32

Before taking final action on certain appeals for a variance the Board of Appeals shall refer such matters to the Schoharie County Planning Commission for recommendation in accordance with the provisions of Section 239-m of General Municipal Law.

#### 3.4 FINDINGS AND CONCLUSIONS

Within 60 days after the final public hearing the Board of Appeals shall either grant or deny the variance and shall make written findings of fact and conclusions concerning the subject matter of such hearing, including the reasons for the granting or denial of the relief sought.

#### 3.5 REPORTING AND FILING OF DECISIONS, PERMITS, AND VARIANCES

Every official and final decision of the Board of Appeals shall be a written resolution, each of which shall contain a full record of its findings in the particular case, and each of which shall be filed in the office of the Town Clerk together with all pertinent documents. The

Board of Appeals shall notify the Town Board and the Planning Board in writing of each variance issued or granted under provisions of this law.

### 3.6 REHEARING AND REVERSAL

Upon motion initiated by any member and adopted by unanimous vote of members present, but not less than a majority of all members, the Board of Appeals may vote to give notice and hold one rehearing to review any order, decision, or determination previously made. After such rehearing, the Board upon the concurring vote of all members present, and provided it shall then appear that the rights vested prior thereof in persons acting in good faith in reliance upon the order, decision, or determination reviewed will not be subject to prejudice thereby, may reverse, modify or annul its original order, decision, or determination.

### 4.0 SITE PLAN REVIEW

4.1 Site Plan Review. All new land use activities within the town shall require a site plan review and approval before being undertaken, except the following:

1. Construction of one- or two-family dwelling and ordinary accessory structures, and related land use activities, unless located within the flood protection district.
2. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this local law.
3. Ordinary repair or maintenance or interior alterations that do not substantially change the use or the structure of an existing commercial or residential structure.
4. Exterior alterations or additions to an existing residential or commercial structure which does not substantially change its use, and which would not increase the square footage of the existing structure by more than 25% and having a cost value of less than \$10,000.00.
5. Nonstructural agricultural or gardening uses not involving substantial timber cutting.
6. Signs under 10 square feet.
7. The sale of agricultural produce and temporary structures related to the sale of agricultural produce.

Any person uncertain of the applicability of this local law to a given land use activity may apply in writing to the Zoning Officer for a written jurisdictional determination. Parties with standing that disagree with a determination of the Zoning Officer may request an interpretation from the Planning Board.

4.10 Waivers. The Planning Board may waive certain requirements of Section 4.3 if a majority of the Planning Board determines that certain information is not necessary due to the type of project or project location. Waivers may be requested by applicants in writing and the Planning Board shall issue waivers in writing outlining the reasons for the waivers.

4.2 Sketch Plan. A sketch plan conference may be held between the planning board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the planning board of his proposal prior to the preparation of a detailed site plan, and for the planning board to review the basic site design

concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:

- (a) A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measurements and features to comply with flood hazard and flood insurance regulations;
- (b) A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features; and
- (c) A topographic or contour map of adequate scale and detail to show site topography.
- (d) All site plans are required to comply with the State Environmental Quality Review Act (SEQRA), and a long or short Environmental Assessment Form will be required.

4.3 Application for site plan approval. An application for site plan approval shall be made in writing to the chairman of the planning board and shall be accompanied by information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the planning board at said sketch plan conference.

(a) Site Plan Checklist.

- 1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
- 2. North arrow, scale and date;
- 3. Boundaries of the property plotted to scale;
- 4. Existing watercourses;
- 5. Grading and drainage plan, showing existing and proposed contours;
- 6. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- 7. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- 8. Provision for pedestrian access;
- 9. Location of outdoor storage, if any;
- 10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- 11. Description of the method of sewage disposal and location, design and construction materials of such facilities;
- 12. Description of the method of securing public water and location, design and construction materials of such facilities;
- 13. Location of fire and other emergency zones, including the location of fire hydrants;
- 14. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
- 15. Location, size and design and type of construction of all proposed signs;
- 16. Location and proposed development of all buffer areas, including existing vegetative cover;
- 17. Location and design of outdoor lighting facilities;

18. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
19. General landscaping plan and planting schedule;
20. An estimated project construction schedule.
21. Record of application for and approval status of all necessary permits from state and county officials.
22. Identification of any state or county permits required for the project's execution;
23. Other elements integral to the proposed development as considered necessary by the planning board.

4.4 Review of site plan. The planning board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

- (a) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs. Signs and lights will be compatible and in scale with building elements and will not dominate the overall visual impact of the project and neighborhood.
- (b) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- (c) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (d) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (e) Adequacy of storm water and drainage facilities.
- (f) Adequacy of water supply and sewage disposal facilities.
- (g) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of the existing vegetation.
- (h) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (i) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- (j) A review for compliance with the intentions of the comprehensive plan.

4.5 Planning board action on site plan. Within sixty-two (62) days of the acceptance of a complete application for site plan approval, the planning board shall render a decision, file said decision with the town clerk, and mail such decision to the applicant with a copy to the zoning officer. The time within which a decision must be rendered may be extended by mutual consent of the applicant and planning board.

4.6 Reimbursable costs. Costs incurred by the planning board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant, not to exceed 2% of the total cost of proposed project.

4.7 Performance guarantee. No certificate of compliance shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. The sufficiency of such performance

guarantee shall be determined by the Town Board after consultations with the planning board, zoning officer, town attorney and other appropriate parties.

4.8 Inspection of improvements. The zoning officer shall be responsible for the overall inspection of site improvements including coordination with the planning board and other officials and agencies, as appropriate.

4.9 Integration of procedures. Whenever the particular circumstances of proposed development require compliance with either the special use procedure in this zoning ordinance or other requirements of the town, the planning board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

## AMENDMENTS TO ZONING LAW

### 5.0 AMENDMENTS - GENERAL PROVISIONS

#### 5.1 AMENDMENTS BY TOWN BOARD

The Town Board from time to time on its own motion or on petition by taxpayers or on recommendations of the Planning Board after public notice and hearing as prescribed by the Town Law – may amend, supplement, modify, or repeal in whole or part this law or the boundary of any district established by this law.

#### 5.2 ADVISORY REPORT BY PLANNING BOARD

Any such proposed change in text or zoning district boundary, not originating from the Planning Board, shall first be referred to the Planning Board prior to public hearing thereon by the Town Board. The Planning Board shall favorably recommend adoption of an amendment or change in this law or in a district boundary only if:

(a) Such change does not conflict with the general purposes, goals and intent of this law.

The Planning Board shall submit to the Town Board its advisory report within 30 days after receiving notice from the Town Clerk of the proposed change. The failure to make such report within 30 days shall be deemed to be a favorable recommendation.

#### 5.3 PUBLIC NOTICE AND HEARING

##### 5.31 PUBLIC HEARING

No such change in text or zoning district boundary of this law shall become effective until after a public hearing is held in relation thereto at which the general public shall have an opportunity to be heard.

### 5.32 NEWSPAPER NOTICE OF HEARING

At least five days prior to the date of such public hearing, a notice of the time and place shall appear in a paper of general circulation. Such notice shall describe the area, boundaries, regulations, or requirements that such proposed change involves.

### 5.33 WRITTEN NOTICE OF CHANGE OR AMENDMENT

At least five days prior to the date of said public hearing, written notice of such proposed change or amendment affecting property within 500 feet of the boundaries of any adjoining Town or Village shall be given to the Town or Village shall have the right to appear and to be heard at such public hearing with respect to any such proposed change or amendment. Written notice shall also be sent to any applicable agency as required in Section 264 of the Town Law.

### 5.4 REFERRAL TO COUNTY PLANNING COMMISSION

Before taking final action on certain proposed amendments to this law, as specified in, and in accordance with, Section 239-m of Article 12-B of the General Municipal Law, the Town Board shall refer such amendments to the Schoharie County Planning Commission for report thereon.

5.5 EFFECTIVE DATE – This law shall take effect upon filing with the Secretary of State.

### 5.6 PROTEST

A protest against a proposed change or amendment to this law if signed by the owners of 20% or more of the area of the land included in such proposed change, or by the owners of 20% or more of the land immediately adjacent extending 100 feet therefrom or by the owners of 20% or more of the land directly opposite thereto extending 100 feet from the street frontage of such opposite land shall require the favorable vote of at least four members of the Town Board to become effective.

### 5.7 ZONING CHANGE IN SUBDIVISION APPROVAL

In approving subdivision plats where one or more lots do not comply with the zoning regulations, application may be made to the Board of Appeals for an area variance, without the necessity of a decision or determination of the Enforcement Officer. The Planning Board shall provide a written recommendation to the Board of Appeals concerning the proposed area variance.

## 5.8 FEE

Every petition for a change or amendment to this law shall be accompanied by a fee set by the Town Board to help defray the cost of such technical studies or professional assistance as may be necessary in connection therewith.

## PLANNED DEVELOPMENT DISTRICTS

### 6.0 PROCEDURE FOR PLANNED DEVELOPMENT DISTRICT

- (1) Preliminary Proposal – Any applicant wishing approval for a Planned Development District shall submit his request to the Town Board in the form of a Preliminary Proposal which shall include.
  - (a) A sketch plan showing existing and proposed land use and the approximate location of proposed buildings, existing topographic characteristics, approximate location of existing and proposed street and easements, and existing land use immediately adjacent to the proposed PDD.
  - (b) A written explanation of the character and purpose of the Planned Development including the type and density of any housing proposed, open space to be provided, the water and sewage disposal system proposed, a general statement of proposed financing, and an indication of the expected timetable for development.
- (2) Developer’s Conference – Upon receipt of the Preliminary Proposal the Town Board shall forward it to the Planning Board for approval or disapproval. Within 45 days after receipt of the Preliminary Proposal from the Town Board the Planning Board shall schedule a conference with the applicant to review the proposed Planned Development. If said proposal seems to be in accordance with overall planning objectives for the area the Planning Board and applicant shall jointly consider the conditions and specifications under which the proposal will be approved. After such conference if the applicant wishes to proceed with the Planned Development he shall submit to the Planning Board a written Statement of Intent to comply with the conditions and specifications as established. If agreement on conditions cannot be reached the Planning Board may, at that time, recommend to the Town Board that the proposal not be approved. Such recommendation shall include detailed explanation of the basis for the Planning Board’s decision.
- (3) Planning Board Recommendation – Upon receipt of the applicant’s statement of his intention to comply with the established conditions the Planning Board shall, within 30 days, forward to the Town Board its recommendation to modify the zoning law and established the PDD. Such Planning Board report shall include the recommended conditions and covenants which the applicant shall observe in the planned development, the applicant’s Statement of Intent to comply with said conditions and covenants, and a recommendation on the type and amount of performance guarantee which the developer should provide.

- (4) Conditional Approval – Within 45 days after receipt of the Planning Board’s recommendation to approve or disapprove the proposed PDD, the Town Board shall hold a public hearing on the proposal. Within ten days after such public hearing the Town Board shall approve conditionally or disapprove the proposed PDD. When conditional approval is granted the location of the PDD shall be noted on the Zoning Map. Conditional approval shall automatically become final upon acceptance of the Final Development Plan by the Planning Board. In the event the Town Board wishes to act contrary to the recommendation of the Planning Board, such action shall be made only by a majority plus one vote.
  
- (5) Final Development Plan – Upon receiving conditional approval by the Town Board the applicant shall prepare a Final Development Plan for submission to the Planning Board. Such submission shall satisfy all the conditions imposed by the Town Board and shall include:
  - (a) Drawings showing the final location of any streets and plot lines, the location of all nonresidential buildings, all land use activities, areas to be conveyed, dedicated or reserved for parks or open space, and a landscaping and tree planting plan.
  - (b) Drawings of approved systems for sewage disposal, water supply and storm water drainage.
  - (c) Written statements, including any staging of construction being considered, a timetable for beginning and completing construction of each stage, and proof of any performance guarantee which may be required by the Town Board.
  - (d) Any additional drawings or statements which may be required by the Planning Board in making its determination that the proposed development will meet all the conditions to which it is subject.

Written approval of a Final Development Plan by the Planning Board shall be filed with the Town Board and the Enforcement Officer. This shall constitute authorization for the applicant to proceed with the Planned Development.

- (6) Changes – Minor changes may be made in an approved Final Development Plan only upon approval of the Planning Board. Major changes such as increased density or reduction of open space are subject to Town Board review and approval.
  
- (7) Certificate of Compliance – Upon completion of a PDD, or any stage of it, a Certificate of compliance shall be required in accordance with Attachment III, Section 1.4 of this Law for that portion which has been completed.

## 6.1 PLANNED DEVELOPMENT GUIDELINES

In reviewing proposals for Planned Development Districts the Planning Board will be guided generally by the following standards and may impose additional conditions as well:

- (a) The proposed district should be at least three acres in area and the overall density of any residential areas should be no more than three dwelling units per gross acre.
- (b) At least 30 percent of the gross area of the district should be devoted to open space and recreation areas.
- (c) Proposed nonresidential uses shall be appropriate in size and suitably located and shall not create any detrimental influences inside or outside the boundaries thereof.
- (d) Approved utility support systems (water, sewers, electricity) shall be required. Electrical distribution and telephone lines shall be put underground.
- (e) An approved storm drainage system shall be provided which will not be detrimental to the surrounding area.
- (f) All provisions of this Law affecting signs and off-street parking shall be complied with.
- (g) Development in such districts shall be protected by such reasonable and appropriate safety measures, devices, screening, or yards as may be required by the Planning Board in order to avoid or minimize any adverse effects on the development itself or on the surrounding area.

6.2 SUBDIVISION IN A PLANNED DEVELOPMENT

If part of a Planned Development proposal involves the subdivision of land into smaller parcels for sale to individual owners, the site plan review required for the PPD shall suffice for Planning Board review under the Town’s subdivision regulations. In such cases the developer shall prepare a subdivision plat suitable for filing with the Schoharie County Clerk in addition to the required PDD drawings. Final site plan approval required by Section 5.7 (5) shall constitute Final Plat approval under the Town subdivision regulations and the plat shall be filed with the County Clerk in the manner prescribed by said Town subdivision regulations.

**SPECIAL USE PERMITS**

7.0 SPECIAL USE PERMITS

On referral by the Enforcement Officer, after application has been made to him for a building permit, or on direct application, the Planning Board is hereby authorized to issue a special use permit for any use for which this law requires the obtaining of such permits from the Planning Board, subject to applicable regulations of this Law and procedures in Town Law §274-b.

7.1 STANDARDS APPLICABLE TO ALL SPECIAL USE PERMITS

In order to grant a special use permit, the Planning Board shall consider the following:

- (a) suitability of the property for the proposed use considering its size, topography, vegetation, soils, hydrology and, if appropriate, its ability to be buffered or screened (landscaping) from neighboring properties and public roads. The Planning Board may impose setbacks larger than those required if it deems appropriate.

- (b) environmental, social and economic impacts of traffic, noise, dust, odors, release of harmful substances, solid waste disposal, glare, or any other nuisances.
- (c) any restrictions or conditions on design of structures or operation of the use (including hours of operation) necessary either to ensure compatibility with surrounding uses or to protect the natural and scenic resources of the Town.
- (d) adequacy of parking for the proposed use, and its accessibility to fire, police, and emergency vehicles.
- (e) any applicable guidelines in Article 4 of the Town of Middleburgh Zoning Law. For telecommunications facilities all applicable guidelines outlined in 7.7 below.

## 7.2 REQUIRED FINDINGS

After a public hearing is held in accordance with Town Law §274-b (6), the Planning Board shall have sixty-two (62) days after the public hearing to make a decision. The Planning Board shall not issue a special use permit unless it makes a written finding that the proposed use, if conducted to any conditions imposed, will satisfy the criteria in 6.1 above. If the Planning Board does not make such a finding, it shall deny the special use permit in writing setting forth the reasons for the denial.

## 7.3 RENEWAL, TIME LIMIT, AND EXTENSION

The Planning Board may require, as a condition to the issuance of any special use permit, that it be periodically renewed, or may issue any special use permit for a specific time period, subject to adequate guarantees that the use covered will be terminated at the end of the period specified or such extension thereof as may be granted by said Board. Any such renewal or extension shall be subject to the same procedure and requirements as specified herein for the original issuance of the special use permit involved.

## 7.4 SUBMISSION OF PLANS

Each application for a special use permit shall be accompanied by:

- (a) a proposed plan at an appropriate scale showing the size and placement of the lot, the design and location of the proposed facilities (including driveways, parking spaces, screens, and fences) and existing and proposed contour lines. The location of the subject lot and all streets within a radius of 1,000 feet shall also be shown.
- (b) a brief narrative describing the proposed use.
- (c) a short form Environmental Assessment Form (EAF) (unless the Planning Board requests a long-form EAF).

(d) an agricultural data statement, if required.

## 7.5 FEE

Each original application to the Planning Board for a special use permit shall be accompanied by a fee to be set by the Town Board.

## 7.6 APPLICATION FOR AREA VARIANCE

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 Board of Appeals for an area variance pursuant to the area variance procedures in this zoning law. Such application may be made without the necessity of a decision or determination by the Enforcement Officer.

## 7.7 SPECIAL USE PERMITS FOR TELECOMMUNICATIONS FACILITIES

### 7.71 APPLICABILITY OF STANDARDS AND PROCEDURES

- a) No telecommunication tower and/or accessory structure/use shall hereafter be used, erected, moved, reconstructed, changed or altered unless in conformity with these standards. No existing structure shall be modified to serve as a telecommunications tower unless in conformity with these standards.
- b) The standards shall apply to all affected property within the Town of Middleburgh.
- c) These regulations will be in addition to the requirements and procedures of Attachment III-Sections 7.0 – 7.6 of this law and all other applicable standards/laws.
- d) At all times, shared use of existing tall structures (for example: water towers, church steeples, farm silos, etc...) and existing or approved towers shall be strongly preferred to the construction of new towers.
- e) Telecommunications facilities proposed by an applicant that is not a public utility as defined by relevant statute shall not be permitted unless the applicant can utilize evidence and show need to use the facilities by a licensed public utility.

### 7.72 PROPOSED SHARED USE OF EXISTING TALL STRUCTURES OR EXISTING OR APPROVED TOWERS

An applicant requesting a special use permit where shared use of existing tall structures and existing or approved towers is proposed shall submit the following to the Planning Board:

- a) All information required in Attachment III Section 7.4(a) of the Town of Middleburgh Zoning Law.
- b) Documentation of intent from the owner of the existing facility to allow shared use.

- c) Report of a licensed professional engineer certifying that the proposed shared use will not diminish the structural integrity and safety of the existing tall structure, or existing or approved tower, and the report explains what modifications, if any, will be required in order to certify the above.
- d) Copy of the applicant's Federal Communications Commission (FCC) license.
- e) Information to verify compliance with Section 7.75 (e-1) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
- f) Completed Full Environmental Assessment Form.
- g) Agricultural Data Statement (if applicable).
- h) The site plan in accordance with Attachment III Section 7.4(a) shall include grading plans for new facilities and roads, guy wire(s) and anchors, and any methods used to conceal modifications of the existing facility.
- i) The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Middleburgh prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to Attachment III Section 1.2 Violations of the Town of Middleburgh Zoning Law.

### 7.73 PROPOSED NEW TELECOMMUNICATIONS TOWERS

An application requesting a special use permit where a new Telecommunication Tower is proposed shall submit the following to the Planning Board:

- a) All information required in Attachment III Section 7.4(a) of the Town of Middleburgh Zoning Law.
- b) Documentation that shared use of existing tall structures and existing or approved towers is impractical.
  - 1) An applicant shall be required to present an adequate report inventorying all existing tall structures and existing or approved towers within a reasonable distance (both within and outside of the Town of Middleburgh) of the proposed site and outlining opportunities for shared use of these existing facilities as an alternative to a proposed new tower.
  - 2) The report shall demonstrate good faith efforts to secure shared use from the owner of each existing tall structure and existing or approved tower as well as documentation of the physical and/or financial reasons why shared usage is not practical in each case.
  - 3) An applicant shall provide written requests and responses for shared use and information on alternative sites researched.
- c) Copy of the applicant's Federal Communications Commission (FCC) license.
- d) Completed Full Environmental Assessment Form.

- e) Agricultural Data Statement (if applicable).
- f) Information to verify compliance with Section 7.75 (a-1) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
- g) The site plan in accordance with Attachment III Section 7.4(a) shall include grading plans for new facilities and roads, and the location of guy wire(s) and anchors.
- h) A “Zone of Visibility Map” that indicates locations where the tower may be seen and the impact of the tower base, guy wires, accessory buildings and roads from abutting properties and roads.
- i) Pictorial representations of “before and after” views from key viewpoints both inside and outside of the town including, but not limited to: public roads, state and local parks, public lands, preserves and historic sites, the Long Path, and any other location the Planning Board determines appropriate.
- j) Adequate emergency and service access plans shall be provided.
- k) Copies of notifications to the legislative bodies of the Towns of Broome, Cobleskill, Fulton, Schoharie, Wright, Berne, Village of Middleburgh, and Schoharie County Planning and Development Agency. Such notification shall include the exact location of the proposed tower, and a general description of the project including, but not limited to, the height of the tower and its capacity for future shared use.
- l) Letter of intent committing the new tower owner, and his/her successors in interest, to negotiate in good faith for shared use of the proposed tower by other telecommunications providers or users in the future. Such letter shall commit the new tower owner and his/her successors in interest to:
  - 1) Respond in a timely, comprehensive manner to a request for information from a potential shared-use applicant.
  - 2) Negotiate in good faith concerning future requests for shared use of the new tower, by other telecommunications providers or users.
  - 3) Allow shared use of the new tower if another telecommunications provider or user agrees in writing to pay charges.
  - 4) 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, pro rata share of the cost of site selection, planning, project administration, land costs, site design, construction and maintenance financing, return on equity, and depreciation, and all of the costs of adapting the tower or equipment to accommodate a shared user without causing electromagnetic interference.
- m) The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Middleburgh prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and/or accessory structures/uses in accordance with these regulations shall be a violation and shall be punishable according to Attachment III Section 1.2 Violations of the Town of Middleburgh Zoning Law.

- n) The successful applicant shall provide the Town of Middleburgh a bond to cover the cost of removal of the tower and accessory structures should the owner not remove the unused telecommunications facilities within six (6) months of the notification of discontinuance. A qualified engineer of the Planning Boards choice (in accordance with Attachment III Section 7.75(d) of this law) will determine the bond amount. The successful applicant will provide the Town of Middleburgh Planning Board with proof of a bond within three months after final special use permit approval or before commencing construction, whichever comes first, or said special use permit shall be deemed void. The successful applicant will provide the Town of Middleburgh Planning Board proof of a renewed bond for each term no less than sixty (60) days before such bond expires.
- o) The successful applicant shall immediately obtain a policy of General Public Liability Insurance if a special use permit is granted. The policy shall be obtained from an insurance company licensed to do business in New York State. The policy shall be an amount equal to the coverage carried by the Town of Middleburgh. A certificate of insurance shall be presented to the Planning Board within three months after final special use permit approval or before commencing construction, whichever comes first, or said special use permit shall be deemed void. The certificate of insurance shall name the Town of Middleburgh as an additional insured. Said insurance coverage shall be maintained until such time as the telecommunication tower has been removed. The successful applicant will provide the Town of Middleburgh Planning Board with proof of insurance and/or insurance renewal on a yearly basis, no less than sixty (60) days before such policy expires.

#### 7.74 PROPOSED ACCESSORY STRUCTURES/USES AT EXISTING OR APPROVED TELECOMMUNICATIONS FACILITIES

An application requesting a special use permit where accessory structures/uses are proposed at existing or approved telecommunications facilities shall submit the following to the Planning Board:

- a) All information required in Attachment III Section 7.4(a) of the Town of Middleburgh Zoning Law.
- b) Copy of the applicant's Federal Communications Commission (FCC) license.
- c) Completed Short/Full Environmental Assessment Form (Planning Board discretion).
- d) Information to verify compliance with Section 7.75 (e-1) Design Standards for Telecommunication Towers and/or Accessory Structures/Uses
- e) The site plan in accordance with Attachment III Section 7.4(a) shall include grading plans for new facilities and roads, and the location of guy wire(s) and anchors.
- f) The applicant shall submit to the Planning Board a letter of intent committing the tower owner, and his/her successors in interest, to notify the Enforcement Officer within thirty (30) days of the discontinuance of use of the tower. This letter shall be filed with the Town of Middleburgh prior to issuance of a building permit (assuming the special use permit is granted). Obsolete or unused towers and accessory structures/uses shall be removed from any site within six (6) months of such notification. Failure to notify and/or remove the obsolete or unused tower and/or accessory structures/uses in accordance with these regulations shall be a violation and shall

be punishable according to Attachment III Section 1.2 Violations of the Town of Middleburgh Zoning Law.

#### 7.75 DESIGN STANDARDS FOR TELECOMMUNICATIONS TOWERS AND ACCESSORY STRUCTURES/USES

- a) The Planning Board may require that any new tower be designed to accommodate future shared use by other telecommunications providers and users. At a minimum, new towers shall be designed to provide for shared use by two (2) providers; or, designed so that they can be retrofitted to accommodate two (2) providers.
- b) Unless specifically required by other regulations, all towers shall have a neutral earth tone or similar painted finish or be camouflaged to minimize negative visual impact. If a painted finish is required, said painted finish shall thereafter be maintained and repainted as required by the Enforcement Officer.
- c) The maximum height of any new tower shall not exceed that which shall permit operation without artificial lighting of any kind or nature, in accordance with municipal, state, and/or federal law and/or regulation. This requirement may be modified at the discretion of the Planning Board if the applicant can justify the need to exceed this height limitation. When lighting is required on the tower, and is permitted by the FAA or other federal or state authority, the minimum lighting required shall be allowed and lighting shall be oriented inward and should not project onto any surrounding residential property.
- d) The Planning Board may request a review of the application by a qualified engineer of the Planning Board's choice. Such engineer would evaluate the need for, and the design of, any new tower and/or the cost of telecommunication facility removal for purposes of the applicant obtaining any required bond. The cost of such review will be borne by the applicant.
- e) All telecommunications towers and/or accessory structures/uses shall be setback from abutting parcels, recorded rights of way, and roads a sufficient distance to contain on-site all ice-fall or debris from tower failure and preserve the privacy of any adjoining property. Towers shall be located with a minimum setback from any abutting parcels, recorded rights of way, and roads equal to one and one-half (1 ½) times the height of the tower, or one hundred (100) feet, whichever is greater.
- f) Accessory structures/uses and attachments to towers shall maximize the use of building materials, colors, and textures designed to blend with the natural surroundings. Any permitted lighting, shall be the minimum required, shall be oriented inward, and should not project onto any surrounding residential property.
- g) No portion of any tower or accessory structure shall be used for a sign or other advertising purpose, including but not limited to: company name, phone numbers, banners, and streamers. Signs displaying owner contact information and safety instructions that are not of an advertising nature will be permitted at the discretion of the Planning Board and shall not exceed five (5) square feet in surface area.

- h) Existing on-site vegetation and ground contours shall be preserved to the maximum extent possible. No cutting of trees exceeding five (5) inches in diameter (measured at a height of four (4) feet off the ground) or deposition of fill materials shall take place on site prior to special use permit approval. If fill was deposited on the site five (5) years prior to an application for a special use permit, the height of a new telecommunication tower will be measured from the original ground elevation.
- i) Deciduous or evergreen tree plantings may be required to screen portions of the tower and accessory structures/uses from adjoining property, public roads, and other important views or vistas.
- j) Maximum use of existing roads, public or private, shall be made. Road construction shall, at all times, minimize ground disturbance and vegetation cutting to within the top of fill, the top of cuts, or no more than ten (10) feet beyond the edge of any pavement. Road grades shall closely follow natural contours to assure minimum visual disturbance and reduce soil erosion potential.
- k) Parking shall be provided to assure adequate emergency and service access. The Planning Board shall determine the number of required spaces based upon the applicant's recommendation.
- l) Sites of proposed new telecommunications facilities and sites where modifications of existing telecommunication facilities are proposed, shall be adequately enclosed by a fence, design of which shall be approved by the Planning Board, unless the applicant successfully demonstrates to the Planning Board that such measures are unnecessary to ensure the security of the tower and the accessory structures/uses.
- m) All Towers must meet or exceed current Federal Standards with the authority to regulate towers and antennas. If such standards are changed, then the owner of the tower and antennas governed by this section shall bring the tower and antennas into compliance with the revised standards within one (1) year of the effective date of the change, unless a more stringent compliance schedule is required by the Federal Government. Failure to bring towers and antennas into compliance with such revised standards shall constitute grounds for the Town to order the removal of the tower or antennas at the owner's expense.

## **WIND ENERGY FACILITY LAW**

### **8.1 Title**

This local law may be cited as the “Town of MIDDLEBURGH Wind Energy Facility Law.”

### **8.2 Purpose**

The purpose of the law is to provide for the construction and operation of Wind Energy Facilities in Town of MIDDLEBURGH, subject to reasonable conditions that will protect the public health, safety and welfare.

### **8.3 Authority**

The Town Board of the Town of MIDDLEBURGH enacts this local law under the authority granted by Section 10 of the New York State Municipal Home Rule Law and the New York State Town Law.

### **8.4 Applicability**

The requirements of this law shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of the Wind Energy Facility Law, including modification of existing Wind Energy Facilities and wind measurement towers erected for the purpose of testing the feasibility of wind energy generation, except for minor wind turbines which have a rated capacity of not more than ten (10) KW and which are intended primarily to reduce consumption of utility power at the situated location. A minor wind turbine, however, shall be set back no less than one and one-half (1 ½) times its height from any public roads or property lines.

### **8.5 Permits**

- A. **Permit Requirement.** No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in the Town of MIDDLEBURGH except by first obtaining a Wind Energy Facility Permit as provided under this law. Wind energy facilities existing prior to the enactment of this law, shall not be required to have a permit.
- B. **Exemptions.** No permit or other approval shall be required under this law for mechanical, non-electrical wind turbine utilized solely for agricultural operations. Replacement in-kind or modification of a Wind Energy Facility may occur without Planning Board approval when (1) there shall be no increase in total height; (2) no change in the location of the wind turbine; (3) no additional lighting or change in facility color; and (4) no increase in noise produced by the wind turbine.
- C. **Transfer.** No transfer of any Wind Energy Facility or Wind Energy Facility Permit, nor sale of the entity owning such facility shall eliminate the liability of an applicant nor of any other party under this law.

## **8.6. Waivers**

The Planning Board may, after a public hearing (which may be combined with other public hearings on wind energy facilities, so long as the waiver request is detailed in the public notice), grant a waiver from the strict application of the provisions of this law to improve the quality of any Wind Energy Facility and better protect the health, safety and welfare of the Town. Area requirements (setbacks) and/or noise requirements shall not be waived by the Planning Board except as described in §8.17 and § 8.23 E of this law. The Planning Board shall consider the impact of the waiver on the neighborhood, including the potential benefits or detriment to nearby properties, the benefits or detriments to the applicant, feasible alternatives and the scope of the request. The Planning Board may attach such conditions as it deems appropriate to waiver approvals to ensure public health, safety and welfare.

## **8.7. Enforcement and Penalties**

- A. The Town of MIDDLEBURGH Board shall designate a code enforcement officer to enforce the provisions of this law and may employ such professional expertise as may be necessary to support these enforcement efforts and assist the Planning Board with application reviews. Such professional fees shall be the responsibility of the applicant to pay (see § 8.24).
- B. Any person owning, controlling or managing any building, structure or land who shall undertake a Wind Energy Facility in violation of this law or in noncompliance with the terms and conditions of any permit issued pursuant to this law, or any order of the enforcement officer, and any person who shall assist in so doing, shall be guilty of a violation of this law and subject to a fine of not more than \$1,000.00. The Town may institute a civil proceeding to collect civil penalties in the amount of \$1,000.00 for each violation and each week said violation continues shall be deemed a separate violation.
- C. The Town may, in the case of any violation or threatened violation of any of the provisions of this law, including permit terms and conditions, institute any appropriate action or proceeding to prevent such unlawful erection, structural alteration, reconstruction, moving and/or use and to restrain, correct or abate such violation, to prevent the illegal act. This shall be in addition to other remedies and penalties herein provided,

## **8.8. Severability**

Should any provision of this law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

## **8.9 Effective Date**

This law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

## **8.10 Definitions**

As used in this law, the following terms shall have the meanings indicated:

**ACCESSORY FACILITIES OR EQUIPMENT:** Any structure other than a wind turbine, related to the use and purpose of deriving energy from such towers, located on the Wind Energy Facility Site.

**AMBIENT SOUND** – The background sound level (pre-development) found to be exceeded 90% of the time over which sound is measured in a noise analysis.

**NYISO – (NEW YORK INDEPENDENT SYSTEM OPERATOR)** - NYISO is a not-for-profit organization formed in 1998 as part of the restructuring of New York State's electric power industry. Its mission is to ensure the reliable, safe and efficient operation of the State's major transmission system and to administer an open, competitive and nondiscriminatory wholesale market for electricity in New York State.

**RESIDENCE** - Any dwelling suitable for habitation existing on the date an application is received. A residence may be part of a multi-family dwelling or multipurpose building, and shall include buildings such as hotels or motels, hospitals, day care centers, dormitories, sanitariums, nursing homes, municipal buildings, schools or other buildings used for educational purposes, or correctional institutions.

**SHADOW FLICKER** – the visual effect of viewing the moving shadow of the Wind Energy Facility rotor blades when they are in apposition between the receptor (person viewing them) and the sun and/or the “strobe” lighting effect of this condition as perceived by the receptor either directly or indirectly (as in a reflection off a light colored wall).

**SITE** - The parcel(s) of land where a Wind Energy Facility is to be placed. The Site can be publicly or privately owned by an individual or a group of individuals controlling single or adjacent properties. Where multiple lots are in joint ownership, the combined lots shall be considered as one for purposes of applying setback requirements. Any property which has a Wind Energy Facility or has entered an agreement for said facility or a setback agreement shall not be considered off-site.

**SOUND PRESSURE LEVEL** - According to the NYSDEC Program Policy on Assessing and Mitigating Noise Impacts, sound pressure level is the sound pressure in the atmosphere, which pressure is expressed in decibels. The sound pressure is measured by the sound level meter satisfying the requirements of the American National Standards specification of sound level meter, S1.4-1971, according to a frequency-weighted decibel scale. The sound pressure can be determined according to the International Standard for Acoustic Noise Measurement Techniques for Wind Generators (IEC 61400-11), or other accepted procedure. Also, the perceived loudness of a sound as expressed in decibels (db). For example, the A-weighted decibel scale dB(A) represents those frequencies most readily audible to the human ear. The C-weighted decibel scale dB(C), approximates response of the human ear to low-frequency sounds. The G-weighted decibel scale dB(G) is designed for infrasound.

**TOTAL HEIGHT** - The height of the tower and the furthest vertical extension of the wind turbine rotor plane.

**TRANSMISSION OWNER** - The owner of the electric distribution networks. Examples include New York State Electric & Gas, National Grid, and Con Edison.

**WIND ENERGY FACILITY** - Any wind turbine, small wind turbine or wind measurement tower or combinations of these, including all related infrastructure, electrical lines and substations, access roads and accessory structures.

**WIND ENERGY FACILITY PERMIT**- A permit pursuant to this law granting the holder the right to construct, maintain and operate a Wind Energy Facility.

**WIND MEASUREMENT TOWER** - A tower used for the measurement of meteorological data such as temperature, wind speed and wind direction.

**WIND TURBINE** - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of more than 100 kW and which is intended to produce power for distribution on the utility grid.

**WIND TURBINE (SMALL)** - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and which is intended primarily to reduce consumption of utility power at that location.

**WIND TURBINE (MINOR)** - A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than ten (10) kW and which is intended primarily to reduce consumption of utility power at that location.

## **8.11 Application Requirements**

A complete application for a Wind Energy Facility Permit shall include:

- A. A completed application for a Wind Energy Facility Permit. The applicant shall be responsible for all costs and fees associated with completing the application requirements.
- B. A site plan prepared by a licensed professional engineer, including:
  - 1) Property lines and physical dimensions of the Site;
  - 2) Location, approximate dimensions and types of major existing structures and uses on the Site, public roads, and adjoining properties within 500 feet of the boundaries of any proposed wind turbines, or 1½ times the total height of such wind turbines, whichever shall be greater.
  - 3) Location and elevation of each proposed wind turbine.
  - 4) Location of all above and below ground utility lines on the Site as well as transformers, the interconnection point with transmission lines, and other ancillary facilities or structures.

- 5) Locations of buffers as required by this law.
  - 6) Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the nearest proposed wind turbine.
  - 7) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
  - 8) In addition, all the provision of the Town of Middleburgh Site Plan Review Law shall apply. (See Attachment **III** Section 4 of the Zoning Law of the Town of Middleburgh.)
- C. A vertical drawing of the wind turbine showing total height, turbine dimensions, tower and turbine colors, ladders, distance between ground and lowest point of any blade, location of climbing pegs, and access doors. One drawing may be submitted for each wind turbine of the same type and total height. The make, model, picture and manufacturer's specifications, including noise decibels data, and Material Safety Data Sheet documentation for all materials used in the operation of the equipment shall be provided for each proposed wind turbine.
  - D. A lighting plan showing any FAA-required lighting and other proposed lighting. Lighting shall be directed up and out, not down.
  - E. Erosion and sediment control and storm water management plans prepared to New York State Department of Environmental Conservation standards, if applicable, and to such standards as may be established by the Town of MIDDLEBURGH Planning Board on the recommendation of its Town Engineer or consultants.
  - F. A construction schedule describing commencement and completion dates, including a traffic analysis with a description of the routes to be used by construction and delivery vehicles, the gross weights and heights of those loaded vehicles.
  - G. An operations and maintenance plan providing for regular periodic maintenance schedules, any special maintenance requirements and procedures and notification requirements for restarts during icing events.
  - H. A decommissioning plan that addresses the anticipated life of the wind turbine, the estimated decommissioning costs, the method of ensuring funds shall be available for decommissioning and restoration, the method by which decommissioning costs shall be kept current, and the manner in which the wind turbine shall be decommissioned and the Site restored, less any fencing or residual minor improvements requested by the landowner.
  - I. List of property owners, with their mailing addresses, within 2,000 feet of the outer boundaries of the proposed Site.

- J. A complaint resolution process to address complaints from nearby residents. The process shall include use of an independent arbitrator paid for by the applicant if the complaint cannot be resolved amicably between the parties. The applicant shall make every reasonable effort to resolve any complaint within sixty (60) days.
  
- K. A transportation plan (see § 8.15) describing routes to be used in delivery of project components, equipment and building materials and those to be used to provide access to the Site during and after construction. Such plan shall also describe any anticipated improvements to existing roads, bridges or other infrastructure, as well as measures which will be taken to restore damaged/disturbed access routes following construction.
  
- L. A Full Environmental Assessment Form, as provided by the New York State Environmental Quality Review Act (SEQRA) shall be prepared for the Wind Energy Facility. This Full Environmental Assessment shall, at a minimum, include:
  - 1) A study of potential shadow flicker, including a graphic to identify locations where shadow flicker may be caused by the wind turbines and expected durations of the flicker at these locations. The study shall identify areas where shadow flicker may interfere with residences and describe measures to be taken to eliminate shadow flicker problems. If shadow flicker impacts are of either high intensity or duration (more than 25 hours per year), then a second level analysis of shadow flickers modeling will occur, including an on-site assessment of property conditions. If shadow flicker can not be minimized to a shorter duration or intensity, project modifications may be required. It is desirable to have no shadow flicker on off-site residences.
  
  - 2) A visual impact study of the proposed wind turbines as installed, which may include a computerized photographic simulation and digital elevation models demonstrating visual impacts from strategic vantage points. Color photographs of the Site accurately depicting existing conditions shall be included as well as a map indicating areas where the wind turbines will be visible to a person at five (5) feet above ground level. The visual analysis shall also indicate color treatment of system components and any visual screening to be incorporated into the project to lessen the system's visual prominence.
  
  - 3) A fire protection and emergency response plan, created in consultation with the fire department(s) having jurisdiction over the proposed Site, as well as Schoharie County Emergency Service including but not limited to fire coordinator, emergency management, sheriff.
  
  - 4) A noise analysis by a competent acoustical consultant including: a. A description and map of the project's noise-producing features which will include but not be limited to the range of noise levels expected (A-weighted, C-weighted and G-weighted), the tonal and frequency characteristics expected, the duration of sound, frequency of occurrence, and the effects of changes in wind speed and direction;

b. The manufacturer's data and standards for all structures, including designed noise levels and the noise levels determined by testing in the field;

c. A survey and report prepared by an independent, qualified, New York State engineer that analyzes the preexisting ambient noise including seasonal and twenty-four (24) hour variations at residences within one (1) mile of the Site boundary;

d. The analysis must be accompanied by a topographic map showing, in increments of 5 decibels out to a level of 20 decibels, the noise level contours of the Site vicinity, in order to visualize the cumulative noise impacts from the Wind Energy Facility on surrounding properties. All residences within the greater of one (1) mile of the Site boundary or the twenty (20) decibel contour shall be clearly shown;

e. Because the Town of MIDDLEBURGH is hilly where noise can carry far and in unexpected directions, the study must consider sounds carried from hilltop to hilltop, hilltop to valley, and along valleys in a radius of ten miles from a Wind Energy Facility. The study must also produce an analysis of cumulative noise impacts; and

f. The applicant shall submit a design for post-development noise monitoring as well as a description of proposed noise control features, including specific measures to protect workers, and to mitigate noise impacts to a level of insignificance off-site. A summary of the applicant's proposed noise complaint resolution program must be included.

- 5) An assessment of potential electromagnetic interference with microwave, radio, television, personal communication systems, 911 and other wireless communication by an independent contractor as determined by the Planning Board with the applicant paying all fees.
- 6) An assessment of the impact of the proposed development on the local flora and fauna, including migratory and resident avian species and bat species. The scope of such assessment shall be developed in consultation with the New York State Department of Environmental Conservation and the United States Fish and Wildlife Service and must at a minimum consist of a literature survey for threatened and endangered species and provide relevant information on critical flyways, and shall describe the potential impacts of any proposed facilities on bird and bat species, and an avoidance or mitigation plan to address any impacts, as well as plans for post-installation studies.
- 7) An assessment of potential immediate and long-term impacts to local flora and fauna, micro and macro habitats, and ground and surface water related, but not limited to, excavation, blasting, clear-cutting and grading during the Site preparation phase including construction of access roads.

- 8) An assessment of archaeological resources that may be impacted by the project. Such assessment shall be conducted in coordination with the New York State Office of Parks, Recreation and Historic Preservation.
  - 9) A report from an independent New York State professional engineer that calculates the maximum distance that ice from the turbine blades and pieces of turbine blade could be thrown. (The basis of the calculation and all assumptions must be disclosed). The incidence of reported ice and blade throws and the conditions at the time of the ice and blade throw must be included.
  - 10) An assessment, pre- and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) mile of the project boundary to show what properties need upgraded wiring and grounding.
  - 11) A geotechnical report that includes: soils engineering and engineering geologic characteristics of the Site based on Site sampling and testing, a bedrock profile within one (1) mile of the Site, information on depth of well, average flow rate, and with permission by owner, test of water quality for all wells within two (2) miles of the Site, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.
- M. A statement signed under penalties of perjury that the information contained in the application is true and accurate.

### **8.12 Application Review Process**

- A. Applicants must arrange a pre-application meeting with the Planning Board and consultants retained by the Town for application review.
- B. Ten copies of the complete application shall be submitted to the Town Clerk. Payment of all application fees shall be made at the time of submission.
- C. The Planning Board shall, within 45 days of receipt, or such longer time as may be accepted by the applicant, determine if all information required hereunder is included in the application. If the application is deemed incomplete, the applicant shall be provided with a written statement listing missing data. If applicant fails to provide data within 45 days, the application shall expire. Upon submission of a complete application, the Planning Board shall proceed with its review.
- D. The Planning Board shall hold at least one public hearing on the application. Notice shall be published in the Town's official newspaper, no less than 14 nor more than 31 days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication shall be required. The public hearing may be combined with public hearings on any Environmental Impact Statement or requested waivers. All adjoining property owners within two thousand (2,000) feet of the outer boundary of a

proposed Wind Energy Facility shall be given notice of a public hearing via certified mail at the expense of the applicant.

- E. Notice of the project shall also be given, if applicable, to the Schoharie County Planning Commission, as required by General Municipal Law § 239-m.
- F. Following receipt of the recommendation of the Schoharie County Planning Commission (if applicable), the holding of the public hearing, and completion of the SEQRA process, the Planning Board may approve, approve with conditions, or deny the Wind Energy Facility Permit application, in accordance with the standards in this law. The Planning Board may also impose financial guarantee and inspection requirements and require permit renewals. Any denial shall be in writing setting forth competent reasons for such denial with references to relevant sections of this law.

### **8.13 Wind Energy Facility Development Standards**

The following standards shall apply to Wind Energy Facilities in the Town of MIDDLEBURGH.

- A. All power transmission lines from the tower to any building, substation, or other structure shall be located underground in accordance with National Electrical Code Standards.
- B. No television, radio or other communication antennas may be affixed or otherwise made part of any wind turbine, except with approval by the Town of MIDDLEBURGH Planning Board. Applications may be jointly submitted for wind turbine and telecommunications facilities.
- C. No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- D. No tower shall be lit except to comply with Federal Aviation Administration (FAA) requirements. Minimum security lighting for ground level facilities shall be allowed as approved on the Wind Energy Facility development plan.
- E. All applicants shall use measures to reduce the visual impact of wind turbines to the greatest extent possible. Wind turbines shall use tubular towers. All structures in a project shall be finished in a single, non-reflective matte finished color or a camouflage scheme. Wind turbines within a multiple wind turbine project shall be generally uniform in size geometry, and rotational speeds. No lettering, company insignia, advertising, or graphics shall be on any part of the tower, hub, or blades.
- F. Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the Planning Board in the form of a waiver.
- G. No wind turbine shall be installed in any location where its proximity with existing fixed broadcast, retransmission, or reception antenna for radio, television, or wireless phone or other communication systems would produce electromagnetic interference with signal

transmission or reception. If it is determined a wind turbine is causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference including relocation or removal of the facilities, or resolution of issues with the affected parties. Failure to remedy electromagnetic interference is grounds for revocation of the Wind Energy Facility Permit for the specific wind turbine or wind turbines causing the interference.

- H. All construction debris shall be removed from the Site or otherwise disposed of in a manner acceptable to the Planning Board.
- I. Wind turbines shall be designed to minimize the impacts of land clearing and the loss of important open spaces. Development on agricultural lands shall follow the Guidelines for Agricultural Mitigation for Windpower Projects published by the New York State Department of Agriculture and Markets.
- J. Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.
- K. Storm water run-off and erosion control shall be managed in a manner consistent with all applicable state and Federal laws and regulations and such standards as shall be applied by the Planning Board on the advice of the Town Engineer and other Town consultants.
- L. Wind turbines shall be located in a manner that minimizes shadow flicker on off-site residences. It is desirable to have no shadow flicker on off-site residences.

#### **8.14 Required Site Safety Measures**

- A. All wind turbines shall have 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. Accessory facilities or equipment shall be gated or fenced to prevent unrestricted public access to the facilities and reduce any attractive nuisance aspects of the use.
- C. Warning signs shall be posted at the entrances to the Wind Energy Facility and at base of each tower warning of electrical shock or high voltage and containing emergency contact information.
- D. No climbing pegs or tower ladders shall be located closer than 15 feet to the ground level at the base of the structure for freestanding single pole or guyed towers.
- E. The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.

- F. Wind Energy Facilities shall be designed to prevent unauthorized external access to electrical and mechanical components and shall have access doors that are kept securely locked at all times.

**8.15 Traffic Routes and Road Maintenance**

- A. Construction and delivery vehicles for Wind Energy Facilities shall propose, and the Planning Board shall approve or modify, designated traffic routes to minimize traffic impacts from construction and delivery vehicles, wear and tear on local roads and impacts on local business operations.
- B. The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a Wind Energy Facility. A public improvement bond shall be required prior to the issuance of any building permit in an amount, determined by the Planning Board, sufficient to compensate the Town, Village, County or State for any damage to Town, Village, County or State roads if any of these roads will be among the designated traffic routes. The applicant shall consult with the Town Highway Superintendent and/or the Schoharie County Department of Public Works and/or the State Department of Transportation to obtain a written recommendation for bonding form and amount, which form and amount shall be approved by the Planning Board.
- C. The applicant shall provide pre-development and post-development photographic evidence of the condition of any Town, Village, State or County roads along the proposed route.

**8.16. Setbacks, Noise and Height**

- A. Each wind turbine shall be set back as follows:

Residences: a distance of no less than one thousand five hundred (1,500) feet.

Property lines: a distance of no less than one thousand five hundred (1,500) feet.

Public Roads: a distance of no less than one thousand five hundred (1,500) feet.

State Wetlands: a distance of no less than one thousand (1,000) feet.

- B. The statistical sound pressure level generated by a Wind Energy Facility shall not exceed the ambient decibel level, both A-weighted and C-weighted, plus 5 decibels measured anywhere along the Site boundary. Ambient sound level measurements shall employ all practical means to reduce or compensate for the effect of wind generated noise at the microphone so as to measure the actual sound level most accurately. Ambient sound level measurements should be performed when wind velocities aloft are sufficient to allow wind turbine operation and should report ambient sound levels for wind speeds aloft corresponding to turbine cut-in as well as the wind speed aloft corresponding to production of the greatest noise. The sound pressure level at any off-site residence shall not exceed ambient sound plus 5 decibels, both A-weighted and C-weighted, as determined in accordance with the

stipulations of Section 8.11(L)(4) of this local law. Independent verification by an acoustical engineer certified with the Institute of Noise Control Engineering shall be provided before and after construction demonstrating compliance with this requirement.

#### **8.17. Noise and Setback Easements**

- A. An applicant may, with approval from the Planning Board, meet noise and setback standards by obtaining written consents from affected property owners stating they are aware of the Wind Energy Facility and the noise and/or setback limitations imposed by this law, and that consent is granted to allow noise levels to exceed the maximum limits provided herein or reduce setbacks to less than required.
- B. Such consents shall be in the form required for easements and be recorded in the 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 decommissioning of the benefited wind turbine in accordance with this law, or the acquisition of the burdened parcel by the owner of the benefited parcel or the wind turbine. No such easement shall permit noise levels at any other location within or outside the areas prescribed to exceed the limitations of this law.

#### **8.18. Issuance of Wind Energy Facility Permits**

- A. The Planning Board should, within 120 days of determining the application is complete, and upon consideration of the standards in this law and the record of the SEQRA review, issue a written decision with the reasons for approval, conditions of approval or disapproval fully stated. This time period may be extended by the Planning Board for just cause.
- B. If approved, the Planning Board shall direct the Town Code Enforcement Officer to issue a Wind Energy Facility Permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code.
- C. The decision of the Planning Board shall be filed within 15 days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- D. If any approved Wind Energy Facility is not substantially commenced within two years of issuance of the Wind Energy Facility Permit, the Wind Energy Facility Permit shall expire, unless the Planning Board shall have granted an extension. Substantially commenced shall mean that the applicant has lawfully begun construction pursuant to the permit and expended at least twenty-five percent (25%) of the estimated cost of the project.

#### **8.19 Abatement**

- A. If any wind turbine remains non-functional or inoperative for a continuous period of twelve (12) months, the owner shall remove said system at its own expense following the requirements of the decommissioning plan. Removal of the system shall include at least the entire above ground structure, including transmission equipment and fencing, from the

property. This provision shall not apply if the owner demonstrates to the Town that it has been making good faith efforts to restore the wind turbine to an operable condition, but nothing in this provision shall limit the Town's ability to order a remedial action plan after public hearing.

- B. Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, New York Independent System Operator, or by lack of income generation. The applicant shall make available (subject to a non-disclosure agreement) to the Planning Board all reports to and from the purchaser of energy from individual wind turbines, if requested and necessary to prove the wind turbine is functioning, which reports may be redacted as necessary to protect proprietary information.
- C. The applicant, or successors, shall continuously maintain a fund or bond payable to the Town, in a form approved by the Town for the removal of non-functional towers and appurtenant facilities, in an amount to be determined by the Town, for the period of the life of the facility. This fund may consist of a letter of credit from a State of New York licensed-financial institution. All costs of the financial security shall be borne by the applicant. All decommissioning bond requirements shall be fully described in the decommissioning plan.

#### **8.20. Limitations on Approvals**

Nothing in this law shall be deemed to give any applicant the right to cut down surrounding trees and vegetation on any property to reduce turbulence and increase wind flow to the Wind Energy Facility. Nothing in this law shall be deemed a guarantee against any future construction or Town approvals of future construction that may in any way impact the wind flow to any Wind Energy Facility. It shall be the sole responsibility of the facility operator or owner to acquire any necessary wind flow or turbulence easements, or rights to remove vegetation.

#### **8.21. Permit Revocation**

- A. The applicant shall fund periodic noise testing by a qualified independent third-party acoustical measurement consultant, which may be required as often as biannually, or more frequently upon request of the Planning Board in response to complaints by neighbors. The scope of the noise testing shall be to demonstrate compliance with the terms and conditions of the Wind Energy Facility Permit and this law and shall also include an evaluation of any complaints received by the Town. The applicant shall have 90 days after written notice from the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.
- B. A wind turbine shall be maintained in operational condition at all times, subject to reasonable maintenance and repair outages. Operational condition includes meeting all noise requirements and other permit conditions. Should a wind turbine become inoperable, or should any part of the wind turbine be damaged, or should a wind turbine violate a permit condition, the owner or operator shall remedy the situation within 90 days after written notice from the Planning Board. The applicant shall have 90 days after written notice from

the Planning Board, to cure any deficiency. An extension of the 90 day period may be considered by the Planning Board, but the total period may not exceed 180 days.

- C. Should a wind turbine not be repaired or made operational or brought into permit compliance after said notice, the Town may, after a public meeting at which the operator or owner shall be given opportunity to be heard and present evidence, including a plan to come into compliance, order either remedial action within a particular timeframe, or order revocation of the Wind Energy Facility Permit for the wind turbine and require its removal within 90 days. If the wind turbine is not removed, the Planning Board shall have the right to use the security posted as part of the decommission plan to remove the wind turbine.

## **8.22 Wind Measurement Towers**

Installation of wind measurement towers, also known as anemometer towers, shall be permitted, upon the issuance of a Wind Energy Facility Permit, to determine the wind speeds and the feasibility of using particular sites. The distance between a wind measurement tower and the property line shall be at least 1½ times the total height of the tower. Wind Energy Facility Permits for wind measurement towers shall be issued for a period of two years and shall be renewable upon application to the Planning Board for one (1) additional year. An application for a wind measurement tower shall include:

- A. Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.
- B. Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.
- C. Proposed development plan.
- D. Decommissioning plan, including a security bond for removal, should the tower not be converted to permanent use for wind energy generation.

Other development standards as set forth above for Wind Energy Facilities shall be applied to the maximum extent practicable, as determined by the Planning Board, recognizing the temporary nature of wind measurement towers.

## **8.23 Small Wind Turbines**

The Planning Board is hereby authorized to approve, approve with conditions, or disapprove small wind turbine applications designed for residential, farm, institutional and business use on the same parcel. Such applications shall be processed in the same manner as those prescribed above for all wind energy facilities, but may be appropriately modified by the Planning Board to reflect the scale of the proposed facility. All small wind turbines shall comply with the following standards and with all other requirements of this law not in conflict herewith:

- A. A system shall be located on a lot a minimum of one acre in size; however, this requirement can be met by multiple owners submitting a joint application.

- B. Only one small wind turbine per legal lot shall be allowed, unless there are multiple applicants, in which their joint lots shall be treated as one Site for purposes of this law.
- C. A small wind turbine shall be used primarily to reduce the on-site consumption of electricity.
- D. Total heights shall be a maximum of 100 feet on parcels between one and five acres and 150 feet or less on parcels of five or more acres.
- E. A small wind turbine shall be set back one and one-half (1.5) times the height of the tower. The Planning Board may waive this provision if the applicant's parcel cannot meet this requirement.
- F. The maximum turbine power output is limited to 100 kW.
- G. Tower-climbing apparatus shall be located no closer than 12 feet from the ground, a locked anti-climb device shall be installed on the tower or a locked, protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access.
- H. Anchor points for any guy wires for a system tower shall be located within 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 six feet high or sheathed in bright orange or yellow covering from the ground up to a minimum of eight feet.

**8.24 Fees**

- A. The Town Board shall, by resolution, establish and from time to time modify a schedule of fees for Wind Energy Facility Permit applications.
- B. The Planning Board may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating the application, including but not limited to Site inspections, the construction and modification of the Site, once permitted, and any requests for recertification. An applicant shall deposit with the Town funds sufficient to reimburse the Town for all reasonable costs of consultant and expert evaluation and consultation to the Town in connection with the review of the application.
- C. The initial deposit shall be \$7,500 and shall be placed with the Town preceding the pre-application meeting. The Town shall maintain a separate escrow account for all such funds. The Town's consultants/experts shall invoice the Town for their services on a monthly basis, which amounts will be charged to the escrow account with notice to the applicant. If at any time during the process this escrow account has a balance less than \$2,500, the applicant shall immediately, upon notification by the Town, replenish said escrow account so that it has a balance of at least \$5,000. Such additional escrow funds shall be deposited with the Town before any further action or consideration is taken on the application.

- D. Should the amount held in escrow by the Town be more than the amount of the actual invoicing at the conclusion of the project, the remaining balance shall be promptly refunded to the applicant. The total amount of the funds required for these services may vary with the scope and complexity of the project, the completeness of the application, and other information as may be needed to complete the necessary review, analysis and inspection of construction.
- E. The initial deposit in the case of Small Wind Turbines shall be no more than \$250.00 with a minimum balance to be maintained in escrow of at least \$100.00. All other provisions of Section 24 shall apply to Small Wind Turbines.

### **8.25 Tax Exemption**

The Town hereby does not exercise its right to opt out of the tax exemption provisions of Real Property Tax Law §487, pursuant to the authority granted by paragraph 8 of that law.