

ARTICLE 1 TITLE, SCOPE, EFFECTIVE DATE AND PURPOSES

Section 1.1 Title

This Local Law shall be known and may be cited as "The Zoning Law of the Town of Schoharie."

Section 1.2 Scope

This is a Local Law that regulates the location, design, construction, alteration, occupancy, and use of structures and the use of all land located within the municipal boundaries of the Town of Schoharie. This Local Law has been designed to further the policies of the Town of Schoharie as set forth in the Town and Village of Schoharie Comprehensive Plan. Its intent is to regulate land uses in a manner that appropriately balances the preservation of the unique character and beauty of the Town while at the same time fostering economic opportunities.

In this regard, this Law ~~divides the Town into various zoning districts and sets forth those uses that are allowed in each district and the various requirements for those uses.~~ retains the concept of designated zoning districts, and incorporates performance standards that can be applied on environmentally sensitive lands and to specified land uses to regulate open space ratios and intensity factors such as building volume, parking, impervious coverage, landscaping, buffering, etc. This Law also creates a review process of varying levels of scrutiny depending on the proposed use, its size and intensity and its proposed location. These levels of review are as follows:

- A. Those uses which have been found to be most suitable for certain areas are permitted upon review by the Town Code Enforcement Officer and the issuance of a Zoning Permit provided all requirements are met as set forth in this Law;
- B. Those uses which have been found to be generally suitable for a particular area of the town but due to the type of use and its nature may create issues of compatibility with the area surrounding its proposed location require review by the Town Zoning Board of Appeals via a Special Use Permit process so that the proposals of this type can be reviewed on a case by case basis in order to protect the surrounding area and properties;
- C. Those uses which have been found to be generally acceptable in a particular area but may have certain issues of concern with respect to the construction and layout of the proposed structure and uses or operation of the use on the proposed site require a Site Plan to be approved by the Planning Board in order to minimize any impacts on nearby areas and properties;
- D. Those uses which by their nature, intensity, size, type of operation or location are inherently problematic require both a Special Use Permit from the Zoning Board of Appeals and Site Plan approval by the Planning Board in order to ensure compatibility with surrounding areas and properties; and
- E. Those uses that are prohibited in certain zones but nevertheless are still proposed require either a zoning change, a legislative amendment of this law by the Town Board or a variance by the Town Zoning Board of Appeals.

Section 1.3 Applicability - Compliance Required

No land use activity as listed below shall be commenced, carried out, or continued except in full compliance with this Law and a Zoning Permit has been issued by the Code Enforcement Officer, or other applicable permit or approval has been issued by the appropriate Board, stating that the proposed building, structure, use of land or structure, or development activity complies with the provisions of this Law:

- A. Erection, re-erection, demolition, or movement of a building or structure;
- B. Change of the exterior structural dimensions of a building or structure;
- C. Change in use of land, buildings or structures through the establishment of a new use, or through the expansion, enlargement or relocation of an existing use;
- D. The resumption of any use which has been discontinued for a period of one (1) year or longer;
- E. Construction of a new on-site sewage disposal system, or the replacement or major modification of any on-site sewage disposal system;
- F. Establishment of or change in the dimensions of a parking area for nonresidential or multi-family residential uses;
- G. Placement of a sign as regulated in Article 4, Section 4.2-3 of this Law; or
- H. Conversion of a seasonal use to a year-round use, including residential use.

Section 1.4 Exemptions

A Zoning Permit or Special Use Permit shall not be required for the following (however, a building permit may be required):

- A. Exempt signs listed in Article 4, Section 4.2-3 of this Law;
- B. Fences or walls complying with Article 4, Section 4.5 of this Law;
- C. Interior structural alterations or routine maintenance and improvement that does not expand the exterior dimensions of the structure (e.g., roofing, window replacement, siding and roofing replacement, etc.);
- D. Minor accessory structures such as posts, sidewalks, driveways, flagpoles, playground equipment, etc. and small utility sheds of one hundred twenty (120) sq. ft. or less and ten (10) ft. high or less located in the rear or side yard (maximum of two (2));
- E. Private resource extraction under the limits set forth in Article 5 section 5.7 of this Law; [note: said threshold limit is one thousand (1,000) tons or seven hundred and fifty (750) cubic yards (whichever is less) of materials extracted over a continuous twelve (12)-month period];

F. The sale of products grown or raised on the land and the construction, alteration and maintenance of agricultural fences, roads, drainage systems and farm ponds;

G. A maximum of two (2) garage, lawn and porch sales per residence, per calendar year, not exceeding three (3) days in duration per event;

H. Agricultural and forestry uses, provided that such uses do not involve clear-cutting;

I. Non-commercial outdoor recreation uses, except those that involve substantial physical improvements; and

J. Any activity for which a permit has been obtained pursuant to a prior zoning law, or which did not require a permit under the prior zoning law and for which substantial on-site work had been completed prior to the effective date of this Local Law.

Section 1.5 Enacting Clause and Purposes

This Local Law is enacted pursuant to the authority and power granted by Municipal Home Rule Law of the State of New York, Article 2, Section 10, et. seq. and Article 16 of the Town Law and Chapter 18, Article 27 of the Consolidated Laws of the State of New York in conformance with the Comprehensive Plan for the Town of Schoharie, to protect and promote public health, safety, comfort, convenience, economy, natural, agricultural, and cultural resources, aesthetics, and the general welfare, and for the following additional specific purposes:

1.5-1 To conserve the natural resources and rural character of the Town by encouraging development in the most appropriate locations and by limiting building in areas where it would conflict with the Town's rural pattern and scale of settlement;

1.5-2 To minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas such as the higher elevations, scenic view-sheds, steep slopes, soils with a likely capability of erosion, stream corridors, wetlands, floodplains, and active farmlands;

1.5-3 To protect existing wooded areas, scenic views, ridgelines, agricultural land, existing and potential recreation areas, waterways, ground and surface water supplies, ecological systems, wetlands, wildlife habitat, and natural vegetation, in order to preserve the predominantly open and rural character of the town;

1.5-4 To preserve and protect lands and buildings that are historically significant;

1.5-5 To further the policies, goals and recommendations of the Town and Village of Schoharie Comprehensive Plan, including but not limited to, the recommendation that land use regulations, programs and administration should, in the Town of Schoharie, always try to use common sense to balance the right to reasonable use of one's property, the rights of adjacent property owners to co-exist without undue negative impacts, and the right of the Town to expect that new development will enhance the community, especially visually, and will not have hazardous impacts.

Section 1.6 Effective Date

This Local Law shall be effective immediately upon enactment by the Town Board and upon filing a certified copy with the Secretary of State of the State of New York.

Section 1.7 Effect on Prior Existing Local Laws, Ordinances and Regulations

This Local Law supersedes all existing Town of Schoharie Zoning Ordinances, Laws, Rules and Regulations.

ARTICLE 2 ADMINISTRATION AND ENFORCEMENT

Section 2.1 Code Enforcement Officer

This Local Law shall be administered by the Code Enforcement Officer together with the Town Board, the Planning Board and Zoning Board of Appeals depending on the appropriate jurisdiction pursuant to this Law. Compliance with this Local Law shall be enforced by the Code Enforcement Officer.

Section 2.2 General Provisions

No person shall undertake any development or commence any land use activity as set forth in Section 1.3 without first applying for, and obtaining, a Zoning Permit from the Code Enforcement Officer unless otherwise exempt pursuant to Section 1.4. A Zoning Permit will be issued only when the Code Enforcement Officer has determined that all requirements of this local law and all other applicable laws and regulations have been satisfied.

Section 2.3 Certificate of Compliance, Special Use Permit, Site Plan Uses, Prohibited Uses

- A. Once a project has been completed, a Certificate of Compliance must be issued by the Code Enforcement Officer before the project can be occupied or used.
- B. Some uses require a Site Plan approval from the Planning Board. These are called "Site Plan Uses" and an applicant must comply with the procedures and criteria for the review and approval of a Site Plan contained in Article 7. Site Plan uses may have an impact on their surroundings if not properly designed for the particular site where the new use is proposed. They are therefore only permitted if they can satisfy the applicable criteria. **Some Site Plan uses also require a Special Use Permit pursuant to the procedures set forth in Article 6 below.**
- C. Some **uses require a special permit from the Zoning Board of Appeals.** These are called "Special Use Permits" and an applicant must comply with the procedures and criteria for issuance of a Special Use Permit contained in Article 6. Special Use Permit uses are more likely to have impacts on their surroundings. They are therefore only permitted if they can satisfy the applicable criteria. Some Special Permit uses require both a Special Use Permit and a Site Plan approval pursuant to the procedures set forth in Articles 6 and 7 below.
- D. Uses that are not expressly allowed in a particular district are prohibited in that district.

Section 2.4 Application Procedure

2.4-1 Meeting with Code Enforcement Officer

Any person intending to engage in an activity that may be subject to this Local Law should meet with the Code Enforcement Officer as early as possible to determine which, if any, permits or approvals may be required and what review procedures, if any, apply.

2.4-2 Filing Applications for Zoning Permit

A person desiring a Zoning Permit shall file an application for a Zoning Permit with the Code Enforcement Officer, together with the appropriate fee. The application shall be submitted on forms provided for such purpose by the Code Enforcement Officer, and shall include a plot plan drawn to scale showing the actual dimensions of the land to be built on or otherwise used, the size and location of all buildings or other structures or other uses to be built or undertaken, septic system and well locations and such other information as may be necessary in the evaluation of the application and the administration of this Local Law. Within ten (10) working days following receipt of the application, the Code enforcement Officer Shall notify the applicant of any additional information required for the completion of the application. If no such notice is timely given, then the application shall be deemed complete as filed. When all additional information is received, the Code Enforcement Officer shall acknowledge the same in writing. The Code Enforcement Officer shall provide a report or copies of the application to the Planning Board, Town Board, and Zoning Board of Appeals on a monthly basis.

2.4-3 Determination

Not later than ten (10) working days after receiving a completed application, the Code Enforcement Officer shall mail or deliver to the applicant the determination that either:

- A. The proposed project or activity complies with the requirements of this Local Law and all other applicable Local Laws and regulations and requires no other approvals, and accordingly a Zoning Permit is issued; or
- B. The proposed project or activity is inconsistent with the requirements of this Local Law or other applicable local laws or regulations, and a Zoning Permit is denied; or
- C. The proposed project requires one or more specified special approvals before a project permit can be granted. The proposed project may, for example, be for a use allowable by a Special Use Permit and/or Site Plan approval, requiring approval of a Special Use Permit by the Zoning Board of Appeals and/or approval of a Site Plan by the Planning Board.
- D. Note that any decision by the Code Enforcement Officer may be appealed to the Zoning Board of Appeals or a variance may be sought from the Zoning Board of Appeals pursuant to Article 9.

2.4-4 Requirements for Special Approvals

The Code Enforcement Officer will advise the applicant of the requirements for the special approvals needed, and shall provide information when requested in the preparation of the required application. When the required special approvals have been obtained, and all other legal and regulatory requirements have been satisfied, the Code Enforcement Officer shall issue a Zoning Permit.

2.4-5 Issuance and Posting

All Zoning Permits shall be issued in duplicate and one copy shall be kept conspicuously posted on the premises at all times (protected from the weather, if necessary, and whenever construction work is being performed thereon.) When issuing a Zoning Permit the Code Enforcement Officer shall sign, date, and return one copy of the approved plans bearing the notation "Approved." No person shall perform any construction or otherwise undertake a project requiring a permit unless a Zoning Permit for such project is displayed as required above, nor shall any person perform such activities after the notification of revocation of a Zoning Permit.

2.4-6 Revocation

If the Code enforcement Officer determines that an application or accompanying plans are in any material respect false or misleading, or that work being done on the premises differs materially from what is allowed by the Zoning Permit, the Code Enforcement Officer may forthwith revoke the Zoning Permit. The permittee shall thereupon cease the use, activity, or construction, and surrender the Zoning Permit to the Code Enforcement Officer.

2.4-7 Lapse and Renewal

A Zoning Permit shall lapse one (1) year following the date it was granted if the project has not been completed or the use has not been commenced. The Code Enforcement Officer shall renew any Zoning Permit one (1) time for a period terminating not later than one (1) year from the date it would have originally lapsed, provided that the facts upon which the Zoning permit was originally granted have not substantially changed. Any further renewals shall require Zoning Board of Appeals approval.

Section 2.5 Site Inspection

The submission of an application for a Zoning Permit, or for any other approval or variance, shall constitute consent to the Code Enforcement Officer and to members or designees of the Boards with authority to grant the required approvals or variances to conduct such examinations, tests, and other inspections of the site as such persons deem necessary and appropriate for the purposes of this Local Law.

Section 2.6 Certificate of Compliance

No use for which a Zoning Permit was granted shall be occupied or maintained except pursuant to a certificate of compliance issued by the Code Enforcement Officer. The Code Enforcement Officer, within ten (10) working days after receipt of request for an inspection of a project, or operation, or use for which a Zoning Permit has been issued, shall inspect and issue a certificate of compliance if the project has been completed, or the use is being operated in compliance with all terms of the Zoning Permit and with all applicable provisions of this Local Law and other laws and regulations. Such a certificate shall constitute a permit to occupy and/or conduct the use.

Section 2.7 Violations

Whenever a violation of this Local Law occurs, the Code Enforcement Officer may enforce compliance to remedy the violation. Any person may file a written and signed complaint requesting enforcement action by the Code Enforcement Officer. All such written and signed complaints shall be made to the Code Enforcement Officer who shall properly record such complaint and immediately investigate and report findings thereon to the Town Board. The Code Enforcement Officer shall have authority to serve an order to cease or remove a violation upon any person owning, leasing, controlling or managing any building, structure, or land. The undertaking of a land use or development for which a Zoning Permit is required, or the construction of any improvement in a manner that materially deviates from an approved plan and the violation of any condition imposed by a Project Permit, Certificate of Compliance, Special Use Permit, Site Plan, variance, or subdivision approval shall constitute a violation of this Local Law.

2.7-1 Penalty

- A. Any person owning, leasing, managing or otherwise controlling any building, structure, or land where violation of this Local Law occurs and any person who commits or assists in the commission of any violation of this Local Law who, after being served with an order to cease or remove such violation, fails to comply with such order within thirty (30) days after such service, shall be guilty of an offense and subject to a fine as authorized in Section 268 of the Town Law. Each week such violation continues ~~shall constitute a separate violation.~~ The Code Enforcement Officer has the authority under this Law and ~~State the Town Law~~ to issue appearance tickets and to prosecute any such violations in the Town of Schoharie Justice Court.
- B. In addition to the penalties in Subsection (A) above, any person who violates any provision of this Local Law shall, for every such violation, forfeit and pay a civil penalty of not more than one hundred dollars (\$100.00). When a violation of any of the provisions is continuous, each day thereof shall constitute a separate and distinct violation subjecting the offender to an additional civil penalty. The Code Enforcement Officer has the authority under this law to issue appearance tickets and to commence civil action in order to obtain a civil penalty under this provision in the Town of Schoharie Justice Court.
- C. For the purposes of this Section where a "person" is an entity other than an individual, the principal executive officer or partner or agent or manager of such entity may be considered to be such person.
- D. The methods of enforcement as set forth in paragraphs A and B above, as well as Section 2.7-2 are not exclusive and may be utilized together, alternatively, repeatedly, or any combination thereof until compliance is obtained and the violation is abated. Abatement of the violation does not preclude the exaction of a penalty, fine, or collection of attorney's fees and costs and such other relief a court may order.

2.7-2 Injunctive Relief

In case of any violation or threatened violation of any of the provisions of this Local Law, or conditions imposed in any project permit or certificate of compliance, the Town may, by resolution of the Town Board, institute an action for injunctive relief to prevent, restrain, correct or abate such violations. As part of such action the Town may request the Court for an order that requires the violator to reimburse the Town for the costs, including the attorney's fees, incurred with respect to the action for injunctive relief.

Section 2.8 Misrepresentation

Any Zoning Permit or other approval granted under this Local Law shall be void if it is based upon or is granted in reliance upon any material misrepresentation or failure to make a material fact or circumstance known.

Section 2.9 Fees

The Town Board, by resolution, shall establish and amend a schedule of fees for the applications and permits required or contemplated by this Local Law. The current schedule shall be on file with the Code Enforcement Officer and with the Town Clerk. Such fees shall be payable to the Town Clerk at the time of application or, as appropriate, at the time of issuance of a permit.

ARTICLE 3 LAND USE DISTRICTS AND LAND USE MAP

Section 3.1 Zoning Districts - Schedule of Uses

The Town of Schoharie is hereby divided into Zoning Districts as set forth below and as shown on the Land Use Map. The Town is divided into ~~four three (43)~~ main Zoning Districts with the addition of **an Overlay District**. The Overlay District has been created in order to provide additional protection or regulation in those areas of the Town that contain certain environmentally sensitive conditions and it is superimposed on the Zoning Districts. The Districts are subject to regulations contained in this Zoning Law. The uses applicable to these Districts are set forth in the Schedule of Uses attached to this law as Schedule A. **Uses that are not explicitly allowed by issuance of a Zoning Permit, Special Use Permit and/or Site Plan approval are prohibited.** ~~Any use not specifically set forth as a permitted use in any zoning district shall be expressly prohibited in that district. A use specifically set forth as a permitted use in one district shall not be permitted in another district unless it is specially set forth as a permitted use in said other district.~~

3.1-1 Rural-Agricultural District

This District encompasses the largest area of the Town. The intent for this District is to allow uses that are compatible with the predominant agricultural and residential uses. The purpose is to allow and promote low-density residential development and commercial or home-based uses that will not have a material adverse effect on the rural character of the area. Most uses except single family residences will require a Site Plan approval, Special Use Permit approval or both in order to review each proposed use on a case by case basis in order to ensure each new use and its location are compatible with the land uses and environmental conditions that exist in the surrounding area as well as to properly plan for future growth and development. Preservation of open space areas and scenic vistas will be encouraged. An Overlay District has been established which includes portions of the R-A District in order to provide additional protection to the Town that are environmentally sensitive.

3.1-2 Commercial District

This District has been delineated as the portion of the Town that would be most appropriate for the location of a variety of commercial uses. The purpose of this District is to promote and allow commercial and mixed uses that will compliment existing businesses and business opportunities in the Town as well as to promote appropriate economic development. All uses in this area require Site Plan or Special Use Permit approval.

3.1-3 Industrial District

This District has been delineated to recognize pre-existing uses that were allowed in the Industrial District under the prior Zoning Law.

3.1-4 Hamlet District

This District is located in and about the Hamlet of Central Bridge. The purpose of this District is to maintain the mixed use and traditional residential character of the existing Hamlet of Central Bridge and to promote those uses which will contribute to enhancing the vitality of the Hamlet setting and to provide for housing opportunities and local services. Residential uses will be allowed by Zoning Permit. Multi-family uses will require only a Site Plan review and most commercial uses will require a Special Use Permit.

3.1-5 Barton Hill Overlay District

This Overlay District has been established because of the sensitive nature of the karst areas located in this area of the Town. Ground water is highly influenced by activities and conditions on the surface due to the nature of limestone rock in this area. The establishment of this Overlay area is to control land uses and their location and design so that the water quality and quantity are not adversely affected. As such, most

uses will require Site Plan review to ensure that structures and uses are properly located in order to minimize any adverse effects on ground water and environmentally sensitive surface conditions such as sinkholes. This Overlay District also requires that all development and use of land within this area follow a set of regulations and standards that are designed to protect the environmental conditions that exist. These regulations and standards are found in Schedule B annexed hereto and made a part hereof.

3.1-6 Floodplain

The Floodplain is established in order to manage the areas in the Town as Federally Regulated Floodplains and Floodways. Additional review by the Town's Floodplain Administrator and additional standards established by the Town's Flood Damage Prevention Law are required for all uses and structures proposed within the Floodplain. The purpose is to protect the safety of the public and property from damage by flooding and to ensure that flood insurance is available for properties within such areas pursuant to the recommendations of the Federal emergency Management Agency. All development and activities in the Floodplain shall comply with the Floodplain Regulations as set forth in the Town of Schoharie Local Law #2 of 2004.

3.1-7. Planned Development Districts (PDD)

These Districts are referred to as "Floating Zones" since they are not anchored to any specific area of the Town. Instead the establishment of the PDD is commenced when a proposal is made to establish an area that is appropriated for and will be designed to properly accommodate a higher density of residential uses, mixed residential and commercial uses, specialty uses such as senior housing, large scale uses, or light industrial use. A PDD is treated as an amendment to this Land Use Law and the Zoning Map and must encompass an area and location of at least three (3) acres that is of a size and condition to accommodate the proposed uses. An application must be made to the Town Board for a zoning amendment to rezone the proposed site along with the establishment of a set of standards, guidelines and procedures that would be specifically applicable to that PDD. The PDD will also be subject to Site Plan review for both individual uses and the entire site. Each use that is proposed for the PDD subsequent to the establishment may be subject to additional review pursuant to the standards, guidelines and procedures established for such PDD. See PDD Regulations Article 12. In no event shall 'industrial use' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/ Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof.

Section 3.2 Zoning Map

The boundaries of the Land Use Districts are hereby established on a map entitled "Zoning Map, Land Use Districts, Town of Schoharie," adopted and certified by the Town Clerk, which is hereby declared to be a part of this Local Law. An unofficial photo-reduction of this map is attached hereto for reference purposes only as Schedule C. If changes are made in district boundaries or other matter portrayed on the Zoning Map, such changes shall be noted by the Town Clerk on the official Zoning Map promptly after the amendment has been approved by the Town Board.

Section 3.3 Interpretation of District Boundaries

3.3-1 Location of Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Zoning Map, the following rules shall apply:

- A. Boundaries indicated as approximately following the centerlines of streets or highways shall be construed to follow such centerlines.
- B. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
- C. Boundaries indicated as following shorelines of streams shall be construed to follow such shorelines and, in the event of change in the shoreline, shall be construed as moving with the actual shoreline.
- D. Boundaries indicated as parallel to or extensions of features indicated in Subsection A through C above shall be so construed. Distances not specifically indicated on the Zoning Map shall be determined by the scale of the map.

3.3-2 Lots in More Than One District

Where a Land Use District boundary line divides a lot in a single ownership, the district requirements of the less restricted portion of such lot may extend up to a maximum of thirty (30) feet into the more restricted portion of the lot.

Section 3.4 Accessory Uses

Uses customarily incidental to principal uses listed in the Schedule of Uses, set forth in Schedule A shall be allowed on the same terms as the principal uses ~~_, whether or not on the same lot.~~

ARTICLE 4 SUPPLEMENTARY REGULATIONS

This Article addresses general standards applicable in all districts.

Section 4.1 On-Site Sewage Disposal and Water Supply

No person shall construct any new building or structure without first meeting the applicable requirements for sewage disposal and water supply. No Building Permit shall be issued until on-site sewage disposal and water supply plans are approved by the appropriate agency.

Section 4.2 Performance Standards for Non-Residential Uses and Multi-Family Developments

4.2-1 Applicability and Purpose

New non-residential uses or multi-family development shall be appropriate in scale and design. To meet the goals of the Comprehensive Plan, design should balance continuity of traditional and contemporary approaches, but maintain local character and the visual appearance of the community.

All new commercial and community structures over two hundred and fifty (250) square feet in size, multi-family developments and other uses where noted must meet the performance standards in this section. It is the responsibility of the Planning Board and Zoning Board of Appeals to attach conditions that may be necessary to ensure that a proposed use will be compatible with its surroundings, with the purposes of this Local Law and with the Comprehensive Plan. These Boards shall deny any proposed use which they find will not or cannot be operated in a manner that satisfies the criteria in this Law.

4.2-2 Standards for Non-Residential Uses and Multi-Family Developments

A. Building Design Standards:

(1) **Applicability:** Agricultural buildings, single and two-family residences are exempt from this section. These design guidelines cover all new construction, when a change of use occurs, building additions over two hundred and fifty (250) square feet, and exterior renovations of any commercial building in the Town of Schoharie. Exterior renovations, for this paragraph, shall mean modifications, changes to windows and doors, and any similar changes, except for replacement in kind. Painting and similar maintenance shall not be included.

(2) Criteria:

(i). **Setbacks:** New construction should maintain a setback distance that is compatible with the general setback distances of its surrounding or nearby buildings.

(ii) **Architectural Harmony and Trademark Architecture:** Architectural design shall be a consideration for all non-residential buildings and architectural design will be in keeping with the small town, rural nature of the Town of Schoharie. Trademark architecture that identifies a specific company by building design features is prohibited unless the design complies with the above.

(iii) Height: Non-residential structures above the maximum height allowed in Schedule A shall require a Site Plan review and a Variance. In reviewing whether to approve a Site Plan, the Planning Board shall ensure that the height of the structure does not block or hinder views from the neighboring properties or cause the significant shielding of sunlight to buildings on neighboring properties.

(iv) Rooflines and Walls: Building design shall avoid flat and mansard roofs, and large areas of blank wall sections. Architectural embellishments that add visual interest to roofs, such as dormers, belvederes, masonry chimneys, cupolas, clock towers and other similar elements are encouraged.

(v) Loading Docks: See Section 4-2.2 D2(vi) below for loading dock standards.

(vi) Screening of Utilities: All air conditioning units, HVAC systems, stacks, elevator housing, and satellite dishes and antennas are to be screened from view from the public right of way and from adjacent properties using walls, fencing, roof elements, screening devices or landscaping.

(vii) Drive-up Windows: Drive up windows, where allowed, shall be placed at that portion of the building that minimizes impacts to adjacent properties and traffic safety. Adjacent properties shall be screened from any glare from vehicles or building lights resulting from use of a drive-up window.

B. Lighting:

(1) Applicability and Purpose: This section sets criteria for providing lighting in outdoor public places in order to ensure safety and reduction of glare. It provides for standards to protect drivers and pedestrians from disabling glare from non-vehicular light sources that shine directly into their eyes and thereby impair safe travel, and to protect neighbors from nuisance glare from poorly aimed or un-shielded light sources. Lighting of a site should provide security and visual interest while not projecting glare onto adjacent properties. All new outdoor fixtures installed and thereafter maintained, other than that serving agricultural buildings and one or two family dwellings shall comply with the criteria as specified below. All outdoor light fixtures using an incandescent lamp with a cumulative wattage of one hundred fifty (150) watts or less are exempt from all the requirements of this section.

(2) Criteria:

(i) Illumination:

1. Where used for security purposes or to illuminate walkways, roadways, and parking lots, only shielded light fixtures shall be used. On-site lighting should be located to avoid harsh glares which distract the motorist's line of sight. For parking areas and general lighting purposes the net illumination shall not exceed one hundred thousand (100,000) lumens per acre unless additional lighting is needed for the planned use and that need is certified in a lighting plan prepared by an engineer or architect. Higher lighting levels may be allowed when lighting is used for display lots, outdoor work areas, or other applications where increased illumination is needed for the use. Regardless of lot size, at least five thousand five hundred (5500) lumens lighting shall be allowed. The maximum height of the luminaries may not exceed thirty (30) feet, without Planning Board approval.

2. All light fixtures that have a maximum output of two thousand (2000) lumens, or a mounting height greater than twenty (20) feet shall have a full cut-off shield.

3. Light fixtures used to illuminate flags, statues, or other objects mounted on a pole, pedestal or platform shall use a narrow cone beam of light that will not extend beyond the illuminated object.

4. Direct light emissions shall not be visible above the building roofline for other upward directed architectural, landscape, and decorative lighting.

5. Externally illuminated signs including building identification signs shall only use shielded light fixtures. No internally illuminated signs are permitted unless they are backlit signs as follows: when signs are composed of individual backlit letters which are silhouetted against a softly illuminated wall or when signs have individual letters with translucent faces containing soft-lighting elements inside each letter.

(ii) Light Trespass and Glare:

All light fixtures shall be designed, installed, and maintained to prevent light trespass, as specified below:

1. Outdoor lighting, whether or not required by this Law; whether on private, commercial, industrial, municipal, or institutional property shall be designed, installed, and maintained in a manner which does not present a disabling glare hazard to drivers or pedestrians. Reasonable measures, such as altering pole height, changing bulb type or using shielded fixtures, may be required by the Planning Board to prevent the projection of a nuisance glare onto neighboring properties.

2. Where a lighting plan is required, at the property line of the subject property, illumination from light fixtures shall not exceed 0.1 foot-candles on adjacent residential property, or 0.5 foot-candles on adjacent business property, measured in a vertical plane.

3. The Planning Board shall use the following table as recommended foot-candles for safety and security :

Location	Average Maintained Foot-candles
Roadways, local residential	0.4
Roadways, local commercial	0.9
Parking Lots, residential	0.8
Vehicular Traffic	0.5
Pedestrian safety, security, orientation	0.8
Vehicular traffic, medium activity lots	1.0
Vehicular traffic, high activity lots	2.0
Medium activity lots	2.4
High activity lots	3.6
Walkways and bikeways	0.5
Building entrances and exits	5.0
Material Storage access	5.0

4. The Planning Board may, as it deems appropriate, require that lighting be controlled by automatic timing devices to extinguish offending sources during specified periods to mitigate glare consequences. The Planning Board may also require that lighting, except for security lighting, be extinguished between the hours of twelve midnight and 6:00 a.m. for businesses that are not in operation during that time.

5. Glare control shall be accomplished primarily through the proper selection and application of lighting equipment. Only after those means have been exhausted shall vegetation, fences, and similar screening methods be considered acceptable for reducing glare.

(iii) Fixture Design: Fixtures must be properly designed for the intended purpose. Lamps shall not be directly seen from normal viewing angles. Lamps shall be directed so that most light output is directed toward the surface to be lighted rather than emitted at undesirable angles.

1. Mercury-Vapor greater than forty (40) watts, Quartz Lamps, lasers, and search lights are prohibited light sources.
2. Poles and fixtures shall compliment the architectural character of the development and surrounding area.

(iv) Installation:

1. Electrical feeds to lighting standards shall be run underground, not overhead.
2. Lighting standards in parking areas shall be placed a minimum of five (5) feet outside the paved lot area or five (5) feet behind perimeter tire-stop locations; or mounted on concrete pedestals at least thirty (30) inches above the pavement, or protected by other acceptable means.
3. Directional lighting fixtures used for sign lighting shall be mounted so they are aimed directly at the sign and shall not cause light to shine outwards to cause glare that may be dangerous to vehicles.

(v) Maintenance: Lighting fixtures used for safety and security lighting shall be maintained in proper working order so as to always meet the requirements of this law.

(vi) Plan Submission: See Chapter 7 for Site Plan Review application requirements. Lighting plans shall be included in Site Plan Review. Lighting plans submitted for review and approval for subdivision and land development and Site Plan Review and shall include a layout of proposed fixture locations, and typical specifications for the fixtures. The Planning Board may also request foot-candle data that demonstrate conforming intensities and uniformities; and a description of the equipment, glare control devices, lamps, mounting heights and means, hours of operations, maintenance methods proposed, and illumination intensities plotted on a ten (10) foot by ten (10) foot grid.

(vii) Exemptions: The following types of lighting are exempt from the regulations of this Article:

1. Outdoor light fixtures that have a maximum aggregate output of less than two hundred and sixty (260) lumens.
2. Temporary holiday lighting used for forty (40) days or less per year.
3. Vehicular lights and all temporary emergency lighting needed for fire protection, police protection, and/or other emergency services.
4. All hazard warning lights required by Federal or State regulatory agencies.

C. Landscaping Standards:

(1) Applicability and Purpose: Existing vegetation and new plantings help integrate new development in rural areas, help maintain visual quality, screens and buffers adjacent uses, and softens or mitigates negative impacts of new development. All new commercial, community uses and parking lots may be required to meet landscape standards. Landscape standards as outlined in this section are also required for a change of use, and buffering existing farms from new, changed, or adjacent development.

(2) Criteria:

(i) Buffers: Landscape buffers shall be provided between all residential and new commercial uses. Buffers may include planted trees and shrubs, hedgerows, berms, or existing forestland. The width of such buffer areas will depend upon the topography, scale of the use and their location on the property but shall normally be between fifty and two hundred feet. Landscaping shall be an integral part of the entire project area and shall either buffer the site from or integrate the site with the surrounding area or both.

(ii) Existing Vegetation: Building placement and lot layout shall be designed to relate to and incorporate existing vegetation. Insofar as practical, existing trees and other vegetation shall be conserved and integrated into the landscape design plan.

(iii) Landscape Components: Primary landscape treatment shall consist of shrubs, ground cover and shade trees and shall combine with appropriate walks and street surfaces to provide an attractive development pattern. Selected landscape plants should be native to the area to the extent practicable. The Planning Board may require, especially in subdivisions, that shade trees be planted and maintained along roads, preferably between the road edge and sidewalk, if present, or within a ten (10) foot setback from the road edge to reinforce rural character.

(iv) Screening: Open storage areas, exposed machinery, and areas used for storing and collecting rubbish shall be screened from roads and surrounding land uses. Suitable types of screening include wood fences and dense evergreen hedges of five feet or more in height. Where evergreen hedges are proposed, a temporary fence may be required to provide screening until the evergreens are of sufficient height.

(v) Parking Lots: Landscape requirements for parking lots are contained in D(2)(v) below.

(vi) Landscape Components: All required landscape components shall be continuously maintained, and any diseased or dead plantings shall be replaced.

D. Parking Standards:

(1) Applicability and Purpose: The Town of Schoharie desires to balance the need for safe, efficient parking lots, and maintaining the rural and historic character found along roads within the Town~~Town roads~~. Because of the visual prominence of parking lots in many developments and commercial establishments, the Town of Schoharie has identified the need to regulate the appearance and design of parking lots. All commercial, community and multi-family residential uses are subject to parking requirements as outlined below.

(2) Criteria:

(i) Off Street Parking: The location, number and layout of parking spaces shall be based on the need to protect public safety and convenience while maintaining community character and environmental, historic, and scenic resources. Since businesses vary widely in their need for off-street parking, it is most appropriate to establish parking requirements based on the specific operational characteristics of the proposed uses. In determining the parking requirements for any proposed use, the Planning Board shall consider:

1. The maximum number of persons who may be driving to the use at times of peak usage. Parking spaces should be sufficient to satisfy eighty five (85%) percent of the anticipated peak demand. There shall be sufficient parking to meet demands of both employees and customers.
2. The size of the structure(s) and the site.
3. The reviewing Board may refer to generally accepted traffic engineering and planning manuals. However, such standards should be used as a guide only.

(ii) Set-aside for Future Parking: The Planning Board may require that an applicant set aside additional land to meet potential future parking needs. Such land may remain in its natural state or be attractively landscaped, but may not be used in a manner that would prevent it from being used for parking in the future. Shared parking facilities are encouraged.

(iii) Lighting in Parking Lots: In all cases lighting in parking lots must be extinguished within one (1) hour of the end of closing. However, building security lights on motion detector switches are acceptable. Parking areas in which lights are necessary all night shall be lighted in a manner that does not result in glare to surrounding residential properties or cause a traffic hazard due to glare or color.

(iv) Stacking Space and Aisle Width: Adequate stacking space (throat area) within the parking area must be provided so that exiting vehicles do not block access to parking spaces while waiting to exit. It may also be necessary to provide space to prevent entering traffic from backing up onto the public roadway. Aisles within parking lots should allow adequate room for vehicles to move smoothly into and out of parking spaces. The necessary aisle width shall be determined based on the degree to which parking spaces are angled, and shall range from twelve (12) to twenty-five (25) feet.

(v) Parking Lot Landscaping, Buffering, Screening:

1. Parking lots should be screened from public view with landscaping, buffering or screening. This may be accomplished through the use of earthen mounds, wood or masonry walls, trees and shrubbery, or any combination to screen parking lots from streets and adjacent properties. Such screening shall be three (3) feet high and visually impervious. The height of any required screening shall decrease where driveways approach sidewalks or walkways and shall not interfere with clear sight triangle requirements. Safety and visual access for vehicles shall be maintained.
2. For parking lots of ten (10) or more cars, interior landscaped areas are recommended to the extent practicable. However, interior landscaping may not be required if the Planning Board determines there is adequate perimeter landscaping.
3. Parking lot layout shall take into account pedestrian circulation. Pedestrian crosswalks shall be provided where necessary and shall be integrated into the wider network of pedestrian walkways.

(vi) Loading and Service Areas: Loading areas vary with the specific uses proposed. Requirements for the number and locations of loading facilities shall be established by the Planning Board as with parking requirements, based upon the following considerations:

1. The expected maximum number of trucks using the loading facilities at times of peak usage.
2. The type of business, size of structure, and size of trucks to be servicing the structure.
3. The need to ensure safety by separating truck traffic and loading operations from pedestrian and automobile circulation.
4. The need to screen trucks and loading facilities from publicly accessible areas as well as from abutting properties, including the need for vegetative screening, buffers, and fencing.
5. In addition, the following standards shall be followed for loading docks:
 - a. All off-street loading areas shall be located on the same lot as the use for which they are permitted or required. Open off street loading areas shall not encroach on any required front or side yard, off-street parking area or access way.
 - b. Loading areas or docks shall be placed behind or on the side of buildings in visually unobtrusive locations from the primary street to the maximum extent possible as determined by the Planning Board in consultation with the applicant. Screening and landscaping shall prevent direct views of the loading areas from adjacent properties or from the public right-of-way. Screening and landscaping shall also prevent spillover glare, noise, or exhaust fumes. Screening and buffering shall be achieved through walls, fences, and landscaping, and shall be a minimum of five (5) feet tall, and shall be visually impervious. Recesses in the

building, or depressed access ramps may be used. Each required loading berth may be open or enclosed. A loading zone is an area of at least four hundred twenty (420) square feet used for loading or unloading cargo, products or materials from vehicles with minimum dimensions of twelve (12) feet by thirty five (35) feet. This area is to be either paved or a dust and mud free surface (not lawn area) which shall be located outside any public right-of-way.

E. Utilities:

(1) Applicability and Purpose: Utilities and utility structures such as vaults, transformer pads, and utility poles negatively impact residential and rural character. This Section applies to new commercial and community uses, when a change of use occurs (see definition), and multi-family dwellings. This also applies to utility work in right-of-ways along any State, County or Town roads.

(2) Criteria:

(i) All utilities shall be underground. Vaults and transformer pads shall be located to minimize visual intrusion on public space. Site plan procedures shall include review of utility plans and location.

(ii) As part of this review, the Planning Board shall ensure that trees are maintained where possible and if not, replaced.

Section 4.2-3 Signs

(1) Applicability and Purpose: The purpose of this section is to encourage use of attractive signs in the Town Schoharie and help promote a healthy business climate, while protecting the aesthetic environment of the Town. The specific purposes of this section are to:

- (a) Control the size, location and character of signs so they will not confuse, distract, mislead, or obstruct vision necessary for traffic safety;
- (b) Control the aesthetics and attractiveness of signs in order to protect existing character, to mitigate any negative impacts on and to be compatible with, neighboring properties, and
- (c) To create a more attractive visual environment in order to maintain community character, protect property values, and encourage economic growth.

(2) Standards: All signs in all land use areas shall conform to the following general requirements:

(i) General Requirements:

- 1. No sign shall be illuminated by or contain flashing, intermittent, rotating, or moving light(s). Current time or temperature signs are allowed provided they meet the other standards in the Law.

2. No luminous sign, indirectly illuminated sign or lighting device shall be placed or directed to cause beams of light to be cast on any public highway, sidewalk or adjacent premises or to cause glare or reflection that will be a traffic hazard or nuisance.
3. No pennants, ribbons, streamers, spinners, or other similar moving, fluttering or revolving devices are allowed, (except for traditional barber poles or for temporary events, sales or announcements). No sign may rotate or move (except those that swing in the wind). Flags and flags depicting "open" or "closed" status of the business are allowed.
4. Neon-type flashing lighted signs are not allowed. Non-flashing, neon signs are allowed only in windows, provided they are inside the building
5. Freestanding or pole signs shall be set back at least ten (10) feet from any property line and twenty (20) feet from a street line so as not to impede the line of sight for egress from a lot.
6. Signs parallel to and attached to a building should not be set away from the building more than eight (8) inches.
7. No projecting sign should extend into a public way or be less than eight (8) feet above a pedestrian way. No projecting sign should extend to a height above the maximum building height allowed
8. Signs shall not be mounted on roofs or extend above the roofline (unless they are mounted on the face parapet wall which extends above the roofline, in which case it cannot extend above the top of the parapet).
9. No sign, except for traffic, regulatory, or informational sign, shall use the words "stop", "caution" or "danger", or have red, amber, or green lights resembling a traffic signal, or resemble "stop" or "yield" signs.
10. Any sign not in use shall be removed at the time of cessation of business.
11. Signs must be constructed of durable materials, maintained in good condition, and not allowed to become dilapidated.
12. All billboards are prohibited as defined in Article 13.
13. All off-premise signs require a Special Use Permit pursuant to Article 6 and in accordance with the criteria set forth in Section 6.3-8

14. 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 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 (3) days after the promotional sale and may be erected or placed no more than seven (7) days prior to the advertised promotional sale.

15. No signs or sign structures, or any combination thereof, exceeding eighteen (18) feet in height will be allowed without first obtaining a Special Use Permit pursuant to Article 6. The height of the sign shall be proportional to the use, the surrounding area and uses, and the location of the sign. A Special Use Permit will not be required if the height and size of the sign is in compliance with the size standards for on premise signs set forth below. Measurement of this dimension includes any berm or landscaped base. No sign shall exceed the height limitations outlined in Schedule A without a Variance and Site Plan Review. Under no circumstances shall any sign or sign structure exceed 35-feet in height.

16. Portable signs may be used by a new business, or a business in a new location, awaiting installation of a permanent sign, for a period of not more than sixty (60) days or until installation of a permanent sign, whichever occurs first. Such a portable sign must meet all the requirements of this Law. A permit for such a portable sign is required.

17. Businesses located in corner buildings are permitted to have one (1) sign for each street frontage.

18. Businesses with service entrances may identify such entrances with one (1) sign that does not exceed two (2) square feet.

19. One (1) sandwich board sign per business is allowed in addition to other signs. The sandwich board sign shall not exceed twelve square (12) feet, can be made of wood, chalkboard or finished metal, have handwritten or painted letters, and must be located within ten feet (10) of the main entrance to the business. The sign shall not interfere with pedestrian circulation, and must be removed at the end of the day.

(ii) Dimensional Standards for Signs in the Town of Schoharie:

1. Permitted on premise signs must follow size standards listed below and require only a Zoning Permit All other signs require a Special Use Permit.

2. One freestanding, pole, or non-pole sign per parcel is allowed. Each business located within the parcel may have one additional sign that is building mounted only.

Size Standards for On-Premise Signs

	All Zoning Districts Except for Commercial and Hamlet	Commercial	Industrial	Hamlet of Central Bridge
FREE STANDING POLE				
Height (max. height in feet)	12	12	12	6
Area (max. square feet)	20	64	64	9
FREE STANDING, NON-POLE				
Height (max. height in feet)	10	12	12	6
Area (max. in square feet)	20	64	64	9
AWNING SIGN				
Letter Size (max. in inches)	16	16	16	8
Height Above Sidewalk (min. In feet)	8	8	8	8
PROJECTING SIGNS				
Above Grade Clearance (min. in feet)	8	8	8	8
Above Grade Clearance: Driveway (min. in feet)	13	13	13	10
Area (each face) (max. square feet)	10	10	10	9
WALL OR BUILDING SIGN				
Size (max. square feet)	32	32	32	9
Total Number of Signs Allowed Per Premise	2 (one free standing & one building mounted per premise)	2 (one free standing & one building mounted per premise)	2 (one free standing & one building mounted per premise)	2 (one free standing & one building mounted per premise)

Footnotes:

(1) For this purpose, adjoining parcels of land under the same ownership shall be considered one commercial premise.

(2) Wall signs are allowed and shall have a total area not exceeding ten (10%) percent of the wall area to which it is attached, or that allowed as listed above, whichever is less. Where a lot fronts on more than one street, the aggregate sign area facing each street frontage shall be calculated separately.

Where two (2) or more wall signs are affixed to one wall, the gross display area shall be the total area of all signs.

(iii) Non-Conforming Existing Signs:

1. Non-conforming existing signs (signs that are not in conformance with this law and section) shall require a Special Use Permit to continue, or be removed by order of the Code Enforcement Officer. The owner of such non-conforming sign shall apply to the Zoning Board of Appeals for a Special Use Permit to continue such non-conforming sign within one (1) year of the date that this Law is adopted. The Zoning Board of Appeals in reviewing such Special Use Permit application shall strive to make such sign or signs in conformance with this section if feasible and not an unreasonable cost to the business or owner of the sign. If such sign is to be replaced or changed in size it shall conform to this section and this law.
2. All signs shall be maintained in a safe structural condition. The owner of any signs deemed to be unsafe, unpresentable, or not in good structural conditions, shall be notified of the deficiencies, and will have sixty (60) days from the time of such notification to remedy the problem or remove the sign. After sixty (60) days, if such sign has not been replaced or repaired, the sign may be removed by the order of the Town Board. Signs which constitute a hazard to public safety by reason of their location or physical condition may be removed or relocated by order of the Code Enforcement Officer. Relocation of an existing sign under these circumstances shall not be considered an action which causes such sign to be made a conforming sign.

(iv) Design Guidelines for Signs:

1. Signs affixed to the exterior of a building shall be architecturally compatible with the style, composition, materials, colors, and details of the building.
2. Wood and painted metal are the preferred materials for signs. Flat signs should be framed with raised edges.
3. Sign colors should be compatible with the colors of the building facade. A dull or matte finish is recommended, to reduce glare and enhance legibility.

(v) Sign Approval Administration:

1. No sign shall be erected without a Zoning Permit from the Code Enforcement Officer, a Special Use Permit from the Zoning Board of Appeals, or a Site Plan approval from the Planning Board, which ever applies, prior to placement, except those listed in "signs for which no permit is necessary (see following chart) prior to placement." The application must include:
 - a) a scale drawing of the sign showing type of sign,
 - b) dimensions, advertising content, materials, method and style of illumination,
 - c) method of structural support,
 - d) letter sizes,

e) colors,

f) support structures

g) location on the land or building in relation to existing buildings, roadways, driveways, sidewalks or paths,\

h) utility poles and other signs,

i) date of erection of sign, and

j) the name of the sign owner and person responsible for maintenance of the sign.

2. No permit is needed for the following signs provided they are equal to or less than the listed size, and not illuminated. All other signs not listed below require a permit.

Signs for which no permit is necessary prior to placement: Maximums are shown in parenthesis:

- Sale or rental signs (6 square feet)
- Signs denoting the architect, engineer or contractor where construction or repair is in progress (12 square feet). These signs must be removed within 30 days after completion of project.
- Professional and trade name plates (6 square feet)
- Home business signs (10 square feet and a maximum height of 3 feet)
- Signs which mark property boundaries, directional signs, prohibit trespassing, hunting, etc, or warn of hazards (4 square feet and maximum height of 3 feet)
- Signs giving the name of the residents or a dwelling and its address (4 square feet)
- Temporary signs such as for garage sales, non-recurring events, political campaign, fund drive, etc or other events undertaken by a political, religious, charitable or educational organization. See section 4.2-3 (2)(i)(14)(20 square feet).
- A bulletin board or similar sign connected with a church, museum, library, school, public or semi-public structures (15 to 20 square feet with a maximum height of 8 feet above ground level). One per premise.
- Sign identifying the name of a farm, and on-premises signs used in conjunction with the sale of farm products (24 square feet)
- Interior signs.
- Flags and flags that depict the "open or "closed" status of the business

3. Approved sign permits shall become null and void after six (6) months if such signs have not been completely and lawfully installed as permitted.

4. For all signs that are to be erected in connection with a project requiring site plan review approval, sign approvals shall be conducted by the Planning Board in conjunction with the Site Plan approval process. If no Site Plan approval is required, signs shall be permitted and approved prior to issuance of building permits. The Code Enforcement Officer shall issue the permit or certificate of compliance (in the case of a Special Use Permit or Site Plan approval), when the sign is found to be in compliance with this section. Approval of a permit may be subject to conditions

necessary to reduce any adverse impacts of a sign on neighboring residential properties. Such conditions may be, but are not limited to, the size, location, lighting, color, or means of structural support.

Section 4.3 Projections into Required Setbacks

4.3-1 Porches, steps, awnings or moveable canopies: May project six (6) feet into any required setback area.

4.3-2 Cornices, eaves and other similar architectural features: May project three (3) feet into any required setback area.

Section 4.4 Setbacks for Accessory Structures and Uses

4.4-1 In the case of any detached barn, garage, stable, tennis court, swimming pool, or any accessory structure attached to the principal structure, all the minimum setback requirements of this Local Law applicable to the principal structure shall be met. Other detached accessory structures or uses may encroach into the required setback provided they:

- A. Are not used for human habitation;
- B. Have a footprint no larger than two-hundred (200) square feet;
- C. Do not exceed sixteen (16) feet in height;
- D. Do not occupy more than ten (10) percent of a required rear setback area;
- E. Are setback at least ten (10) feet from side or rear lot lines;
- F. Are not located closer to the street than the front setback required for a principal structure, except for fences, gates, mailboxes, newspaper receptacles, signs, sand storage bins, and similar road side structures with less than one-hundred (100) square feet of footprint, as well as ornamental structures such as pillars and statues;
- G. Are not used for housing animals or storing manure, fertilizer, or chemicals.

4.4-2 Corner lots, the setback from all streets shall be the same for accessory structures as for principal structures.

4.4-3 Lake front lots, any swimming pool, tennis court, or other accessory structure or use with a footprint greater than six hundred (600) square feet shall, if in front of the principal structure; be set back at least twice the minimum front setback requirement.

Section 4.5 Fences (Including Hedges) and Walls

4.5-1 The setback requirements of this Local Law shall not apply to retaining walls or fences less than six (6) feet high in any side or rear yard, except where corner clearances are required for traffic safety.

4.5-2 The setback requirements of this Local Law shall not apply to any front yard fences or walls less than four (4) feet high, except that customary agricultural wire, board, or split rail fence, which does not obstruct visibility, may be higher.

4.5-3 All fences are required to be a minimum of two (2) feet off the property line and built with the better side facing out.

Section 4.6 Erosion and Sedimentation Control

Where appropriate in the reviewing Board's discretion, any land use proposal shall address the provisions for storm-water runoff and erosion and sedimentation control. The following standards shall apply in all Zoning Districts:

4.6-1 Clear Cutting

- A. No clear-cutting shall be permitted within one hundred (100) feet of any stream, lake, pond or wetland.
- B. No clear-cutting shall be permitted on land where slopes are fifteen (15%) percent or greater.
- C. No clear-cutting shall be permitted within fifty (50) feet of any lot line.
- D. No clear-cutting which effects one (1) or more acres of ground surface within any lot or any contiguous area shall be permitted until an erosion or sedimentation control plan has been approved by the reviewing Board.

4.6-2 Control Plans Within the exception of activities directly related to agricultural uses, no land use activities listed below shall be carried out until an erosion or sedimentation control plan has been approved by the reviewing Board.

- A. Site preparation on lands where slopes are fifteen (15%) percent or greater.
- B. Site preparation or construction within one hundred (100) feet of any stream, lake, pond or wetland.
- C. Site preparation or construction within any area designated by the Federal emergency Management Agency as a one hundred (100) year floodplain.
- D. Any site preparation or construction on the site of an industry use.

4.6-3 Revegetation Areas of land affected by any of the following activities shall be revegetated during the closest growing season following cessation of the operation or activity:

- A. Excavation, excluding mining, which affects more than one thousand (1000) cubic yards of material within any contiguous area. All excavation and mining activities shall also be subject to the regulations set forth in Section 5.7 of this law. **In no event shall 'excavation' or 'mining activities' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/ Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof).**

~~A-B.~~ Stripping of topsoil material that affects more than twenty thousand (20,000) square feet of ground surface within any lot or contiguous area.

~~B-C.~~ Grading which affects more than twenty thousand (20,000) square feet of ground surface within any lot or contiguous area.

~~C-D.~~ Filling which exceeds a total of one hundred (100) cubic yards of material within any lot or contiguous area.

4.6-4 Contents of Control Plans Storm-water, erosion, and sedimentation control plan should contain the following elements:

- A. A topographic map of the site at a scale and contour levels deemed to be suitable for review and evolution of the proposed activity and the related control plan.
- B. The anticipated length of time and time of the year of site preparation, grading or other activities regulated in this section.
- C. A description of the erosion and sedimentation, and/or storm-water runoff, control techniques to be employed during and after site preparation and/or other activities contemplated herein
- D. Any other information that the reviewing Board may reasonably require in order to adequately review and evaluate the sufficiency of the proposed control plan.

4.7 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 aesthetics objectives of the Town.

B. Permit application and fee. Prior to placing a temporary storage unit on a property, a person must submit an application and receive a permit. An insurance certificate providing liability insurance in the amount of \$100,000 provided by the company supplying the temporary storage unit must accompany the application. Applications are available from the Town office which. A permit fee shall be payable to the Town Clerk at the time of the application.

C. Duration. Permits will be granted for a period of thirty (30) days. At the expiration of the 30-day period, an applicant may seek to extend the permit for an additional thirty (30) days by seeking an extension for cause from the Code Enforcement Officer. In no event shall a permit be extended beyond sixty (60) days.

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 deterioration, weathering, discoloration, graffiti, rust, ripping, tearing or other holes or breaks at all times.

No temporary storage unit shall be used to store waste, construction debris, demolition debris, recyclable materials, business inventory, commercial goods, or any public 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 Schoharie 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.

A.G. Penalties for offenses.

ARTICLE 5 SUPPLEMENTAL REGULATIONS-STANDARDS FOR SPECIFIC USES

This Article addresses particular standards for specific types of use. These standards are applicable in all Districts wherever such uses are located.

Section 5.1 Farm Stands and District Marketing Operations

(1) Applicability and Purpose: Temporary farm stands such as those conducted from a vehicle or other moveable wagon or structure are allowed. Temporary farm stands do not require a Site Plan review or a Special Use Permit. They may require other approvals not covered by this Land Use Law (for example a Vendor's Permit). The retail portion of a farm operation not more than five hundred (500) square feet in size, and located at least twenty feet from all property lines and road rights of way are permitted by right in all locations of the Town. Farm-related businesses that are conducted outside the primary farm business such as equipment sales, and retail portions of farm operations larger than five hundred (500) square feet in size, require a Site Plan review.

(2) Standards: All applicable signage requirements of Section 4.2-2 must be met. Off road parking shall be provided for all employees and customers except if located within the Central Bridge Hamlet.

Section 5.2 Performance Standards for Certain Agricultural Uses

5.2-1 Applicability and Purpose The policy of the Town is to protect agricultural land and agricultural operations so that these businesses can continue in a profitable and efficient manner. The following performance standards are designed to protect existing farms, especially in Agricultural Districts, from new uses that may conflict with farm operations, and to ensure that new land uses in and around farms, especially in Agricultural Districts, are informed about adjacent farm operations and potential impacts. These standards are applicable to intensive agricultural uses outside Agricultural Districts, and for subdivision and new land uses located within Agricultural Districts, as noted below.

5.2-2 Standards

A. Intensive Agricultural Uses Outside Agricultural Districts: Any agricultural operation that meets the Concentrated Animal Feeding Operation (CAFO) standards and definitions must buffer their operation from adjacent uses that are unrelated to the agricultural operation. Buffers may be setbacks or use of vegetative screening.

B. Buffering Agricultural Uses From New Land Uses Within Agricultural Districts: Proliferation of rural residences or new commercial uses can lead to increased conflicts over agricultural operations. By separating incompatible uses, a buffer minimizes the impacts of development on surrounding agricultural operations and decreases the likelihood of conflict. A buffer will be required between farmland located within a State Agricultural District and any new residential, commercial or industrial development. The applicant for a new land use has the responsibility to provide for this buffer. Each new residence must be placed at least two hundred (200) feet away from the boundary between it and the agricultural parcel. The buffer should not be established in a way that impedes farm operations.

C. Subdivision in Agricultural Districts: Insofar as practicable, new dwellings in any subdivision should be sited with flexible setbacks to ensure maximization of open lands for agriculture. The buildings should be located and constructed so as to disturb the least amount of prime or important soils as possible. The Planning Board may require applicants for subdivisions to submit a Cluster Subdivision Development Plan (See Article 11 below).

D. Agricultural Data Statement: An Agricultural Data Statement is required to help local planning agencies recognize the policies and goals of the State law and the Town and Village of Schoharie Comprehensive Plan and to avoid unreasonable restrictions or regulations on farm operations. All applications for special use, Site Plan approvals, use variances, or subdivision approvals require an Agricultural Data Statement if they occur on a property containing a farm operation or on property with boundaries within five hundred (500) feet of a farm operation or on a property within an Agricultural District. The applicant has the responsibility to prepare the Agricultural Data Statement.

(1) Contents of Data Statement and Required Notice to Landowners: The agricultural data statement must include the name and address of the applicant, a description of the proposed project and its location, the name and addresses of landowners within five hundred (500) feet of the boundary of the proposed project property and a map showing the project's site relative to the farm operations identified. The Planning Board must notify the owners of land identified to allow farmland owners to comment on the effect of any proposed changes on their farm operation.

(2) Evaluation of Impacts: The Planning Board is required to evaluate the possible impacts of the proposed project so that the policy and purposes of the Comprehensive Plan, and the State Agricultural Districts Law are upheld. State law requires that the Planning Board notify the Schoharie County Planning Commission about any proposal requiring Agricultural Data Statements.

E. Required Disclosure Notice for Lands Within Agricultural Districts or Within Five Hundred (500) feet of Existing Agricultural Operations: Any landowners who sell or transfer property located in a State Agricultural District or within five hundred (500) feet of an existing agricultural operation are required to provide a disclosure notice to prospective buyers or transferees stating: *"It is the policy of this state and this Town to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This notice is to inform prospective residents or new land users that the property they are about to acquire lies partially or wholly within an agricultural district, or adjacent to an existing agricultural operation, and that farming activities occur. Such farming activities may include, but are not limited to, activities that cause noise, dust, odors, the operation of machinery, and the storage and disposal of manure. Owners, occupants, and users of this property should be prepared to accept such inconveniences and discomfort."* Receipt of the disclosure statement must be recorded on a property transfer report prescribed by the Office of Real Property Services.

F. Right to Farm: This Local Law shall not be interpreted, administered, or enforced in a manner that unreasonably restricts agricultural structures, or normal farming practices occurring on lands that are within State Agricultural District, unless such restrictions are necessary for the protection of public health and safety.

G. Avoidance of Building on Prime or Unique Soils: In reviewing any subdivision, Site Plan or Special Use Permit application, the Planning Board or Zoning Board of Appeals shall require that structures (except farm structures) and impermeable surfaces be located, insofar as practicable, on those portions of a tract of land where they will have the least negative impact on agricultural soils potential and agricultural operations. Examples where not practicable include areas of steep slopes, wetness, or areas with difficult lot configurations or road access problems.

Section 5.3 Home Based Businesses

5.3-1 Purpose The Town of Schoharie recognizes the need to encourage home-based businesses. 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 permits for home-based businesses. The purposes of the following performance standards are to ensure that home businesses are compatible with other adjacent uses, to maintain the rural nature of Schoharie, to ensure that public facilities designed for residential purposes are appropriately used in the course of a home-based business, to ensure the peace and quiet of residential or rural areas, and to allow residents to utilize their homes for employment while avoiding excessive impacts of noise, traffic, nuisance or other impacts. This section is applicable to all home-based businesses.

5.3-2 Applicability All home-based businesses that comply with the following requirements are allowed accessory uses to a single-family residential dwelling and require only a Zoning Permit from the Code Enforcement Officer prior to commencement of the use:

- A.** The off-premises impact of noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare shall be no greater than that produced by a typical single-family residence in the neighborhood.
- B.** Traffic generated shall not be in greater volume than would normally be expected in the neighborhood.
- C.** Parking shall be provided off-street and shall not be located within the front setback area unless it is screened from public and no more than a total of three parking spaces shall be allowed for both the residence and the home occupation.
- D.** No more than two (2) signs, non-illuminated, and not larger in the aggregate than ten (10) square feet in size shall be allowed.
- E.** No more than one (1) employee or co-owner in addition to the inhabitants of the residence regularly is employed or works at the home-base business site.
- F.** Less than twenty five (25%) percent or one thousand (1000) square feet, whichever is less, of the gross area of the residence is devoted to the home-based business or, if located in a barn, garage or other outbuilding, the total area of the home-based business is less than one thousand (1000) square feet.

5.3-3 Special Use Permit Requirements All home-based businesses that do not meet all of the above requirements in Section 5.3-2 shall require the review and approval of a Special Use Permit by the Zoning Board of Appeals pursuant to Article 6. In considering said Special Use Permit application, the Zoning Board of Appeals shall ensure that the use proposed is compatible with the surrounding neighborhood, will not adversely affect the character or environmental conditions of such neighborhood, will not affect adjacent properties, and will comply with the following standards in 5.3-4.

5.3-4 Standards

A. Employees: A home-based business shall be incidental and secondary to the use of a residence or home. It shall be conducted in a manner that 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-based business may be conducted within a dwelling unit or within accessory structures or both. The home-based business is to be conducted with not more than one non-resident assistant or employee at any one time.

B. Sign: Any signs used in conjunction with a home-based business shall meet the requirements of Article 4 Sec. 4.2-3 of this local law, and shall not exceed ten (10) square feet.

C. Parking: Off street parking shall be provided as required in Article 4 Sect. 4.2-2D. No more than one (1) vehicle larger than a passenger vehicle may be parked in a location visible from a public road or neighboring properties.

D. Traffic: A home-based business shall not generate excessive traffic. In determining traffic conditions, the Planning Board shall consider 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-based business, unless it is screened from the road and from other properties.

F. Nuisance: No noise, vibration, smoke, electrical interference, dust, odors, or heat shall occur. The use of substances which may endanger public health or safety or that pollute the air or waters are prohibited.

G. Appearance: The appearance shall be residential in design.

Section 5.4 Multi-family Residential Homes

5.4-1 Applicability and Purpose The Town of Schoharie ~~wish~~wishes to encourage affordable housing. This can be accomplished by allowing multi-family dwelling units. At the same time, the Town wants to ensure that large multi-family units fit into the neighborhood and have minimal impacts. This section applies to dwellings having three or more units, or two or more duplexes in the same development within the Town of Schoharie.

5.4-2 Standards with Special Use Permit

A. Two-family Dwellings: Two family dwellings shall be permitted by right in all land use areas.

B. Multi-family Dwellings: Multi -family dwellings are allowed in all locations with a Site Plan Review provided they are approved by the Schoharie County Department of Health regarding the provision of a potable water supply and septic system where applicable.

- (1) Lots containing multi-family dwellings shall have sufficient acreage to satisfy parking, on site septic and water supply requirements.
- (2) Structures may be converted to multi-family use provided that the Zoning Board of Appeals grants a Special Use Permit for such conversion. Any conversion must comply with and be reviewed through the site plan process.
- (3) No lot may contain more than one principal residential structure.

C. Accessory Residential Structures and Accessory Apartments: Accessory structures may be used for residential purposes in any land use area provided that the following conditions are met:

- (1) The Zoning Board of Appeals may grant a Special Use Permit allowing accessory dwelling units to be located on a lot provided that the Zoning Board of Appeals finds that such additional dwelling units comply with Schoharie County Health Department regulations and with applicable sections of this Law. The Board may require, as a condition of the Special Use Permit, that such accessory dwelling units may not be later subdivided onto separate lots. Such a restriction on future subdivision shall be implemented by means of a recorded conservation easement or deed restriction enforceable by the Town. The Zoning Board of Appeals shall have jurisdiction over Special Use Permits for any project that includes new accessory residential structures and accessory apartments or additions to or conversions into such structures.
- (2) No accessory residential structure shall be subdivided into a separate lot unless it can satisfy applicable requirements of this Law and applicable regulations of the Schoharie County Health Department.

Section 5.5 Mobile Homes

A. New Mobile Homes Outside of Mobile Home Parks: New singlewide mobile homes are prohibited ~~from all land use areas~~ except in Mobile Home Parks and except when placed on operating farms located within a New York State Agricultural District. New doublewide mobile homes are allowed in the Rural-Agricultural District subject to a Special Use Permit.

- (1). Single or doublewide mobile homes are permitted to be placed on operating farms located within a New York State Agricultural District provided that:
 - (i) Documentation shows that the farm derives its major source of income from farming.
 - (ii) An affidavit from the farmer is provided stating that the mobile home is to be used by a farm worker employed by them.
 - (iii) The mobile home has its own separate septic system and water supply.
 - (iv) If the farm is sold for non-agricultural uses or discontinued, the home must be removed from the premises within three (3) months.

B. Replacement of Existing Mobile Homes: Existing singlewide mobile homes may be replaced with new singlewide or doublewide mobile homes provided they were manufactured in accordance with current HUD standards. Existing doublewide mobile homes may only be replaced with doublewide mobile homes provided that the doublewide home is manufactured in accordance with current HUD standards. Replacement of mobile homes located on existing conforming or non-conforming lots will be required to meet all design criteria as outlined below in 5.5-C.

C. New Mobile Home Parks and Expansion of Existing Mobile Home Parks: Design criteria for replacement of existing or installation of all new mobile homes, where allowed, in Mobile Home Parks shall be required as follows:

- (1) All mobile homes shall be mounted on a permanent concrete reinforced slab base or footing. Each home site must be suitably graded to provide adequate drainage. The perimeter of the home shall be enclosed with solid skirting with adequate ventilation.
- (2) Mobile homes must be finished with a natural wood exterior or other natural or artificial materials, that because of their color and texture, have the appearance of clapboards, wood shingles or other traditional house siding and blend in with the landscape to enhance or maintain the attractive visual character of the neighborhood.
- (3) Mobile homes shall have shingled, peaked roofs with a minimum pitch of 4:12.
- (4) Mobile homes shall comply with federal requirements and the New York State Uniform Fire Prevention and Building Code.
- (5) Mobile homes shall have a minimum size of seven hundred and twenty (720) square feet and a minimum width of fourteen (14) feet.
- (6) No evidence of a mobile home's trailer hitch or wheels shall be visible once it has been installed.
- (7) No occupancy shall occur until a Certificate of Compliance, certifying that all of the above requirements have been met, has been issued by the Code Enforcement Officer.

D. Expansion and Replacement of Existing Mobile Home Parks: If a Mobile Home Park existing on the effective date of this law has three or fewer mobile homes, then any singlewide mobile home located in that mobile home park is prohibited from being replaced with new singlewide mobile homes. Such a Mobile Home Park may not expand. If the existing Mobile Home Park has four or more units, existing single and doublewide mobile homes will be allowed to be replaced with new single or doublewide mobile homes subject to all design criteria in this section. Existing Mobile Home Parks (four or more units) may expand in the number of units on the site to no more than fifty (50) percent greater than the number of dwellings existing at the effective date of this Law. To expand beyond this percentage, all performance criteria for a new Mobile Home Park must be met.

E. New Mobile Home Parks: New Mobile Home Parks within the Town of Schoharie shall be allowed in Commercial, Rural-Agricultural and Planned Development Districts provided that the following standards are met and reviewed through the Site Plan Review process:

(1) The Planning Board may impose additional conditions on approval provided such conditions are reasonably related to the goal of preserving neighborhood character.

(2) A new Mobile Home Park will be allowed with up to four (4) units per acre maximum in the park with a minimum lot size per home of six thousand (6000) square feet. Minimum acreage required for a Mobile Home Park is ten (10) acres. Homes shall be situated so that each home shall have a minimum yard space of twenty (20) feet in the rear, a minimum of fifteen (15) feet in side yards and a minimum of thirty (30) feet between homes.

(3) All necessary unattached structures are restricted to rear or side yard locations. Minimum setbacks for an accessory building shall be three feet from the rear or side line.

(4) There is a required one hundred (100) foot setback from any road or highway and not less than one hundred (100) feet from any property boundary for placement of any mobile home, lot or accessory building.

(5) There shall be a twenty five (25) foot buffer zone planted or maintained in trees for screening along public highways. Trees must have a minimum average height of three (3) feet measured from the ground to the highest point of the tree. The buffer zone should be densely planted with trees and shrubs or left in a wooded condition along side and rear property lines and public roads.

(6) Interior roads must be built to Town road specifications except for a required width of eighteen (18) feet of surface excluding a minimum of hard green lawn space as a shoulder. Homes shall be located a minimum of fifteen (15) feet from the nearest pavement edge of any interior park street.

(7) All lots within the park shall be permanently marked by a licensed land surveyor

(8) A completed application, to be reviewed by the Planning Board prior to construction, for establishment of a Mobile Home Park shall include plans for garbage storage and handling, sanitary system, potable water supply, fire protection, adequate storm water retention or drainage, and electrical service. Application materials on and review of landscape, parking and lighting plans are required.

(i) The Planning Board shall review the application considering applicable requirements of this section including:

1. Whether satisfactory ingress and egress exists and the effect of increased traffic on area roads and highways.
2. The design and adequacy of community streets, parking areas, driveways, and lighting.
3. Landscaping, open spaces and recreation.
4. The impact upon schools, public services, and utilities.

- (9) Lighting within the community shall follow standards set forth in Article 4, Section 4.2-2B
- (10) Two (2) off-street parking spaces per unit must be provided with additional off-street parking areas set up for guest or accessory parking at the rate of one (1) space per unit. Additional parking spaces may be put in lots elsewhere in the park and may be constructed with pervious surfaces. No on-street parking will be allowed due to safety considerations.
- (11) All utility distribution lines shall be placed below ground. No overhead distribution lines shall be allowed.
- (12) All proposed landscaped areas shall be clearly indicated on the plan, and the type of treatment (grass, shrubs, ground cover, etc.) shall be specified.
- (13) Recreation areas of at least thirty (30%) percent of the buildable land in the Mobile Home Park should be set aside for green space.
- (14) Each site must have attachments for waste disposal and water supply. Accommodations for sanitary facilities, storm runoff and water supplies must be made in accordance with the regulations of New York State Department of Environmental Conservation and the Schoharie County Department of Health.
- (15) Each unit must be mounted on a permanent reinforced concrete slab base. Each home site must be suitably graded to provide adequate drainage.
- (16) Mobile homes shall be constructed in accordance with regulations set forth in the Code of Federal Regulations (CFR).
- (17) Every mobile home shall have a manufacturer's labels certifying that the home is in compliance with all Federal construction and safety standards. Every factory-manufactured home or component shall bear an Insignia of Approval issued by the New York State Division of Housing and Community Renewal. Every mobile home shall also bear a data plate, affixed in the manufacturing facility, bearing not less than the following information:
- (i) "This mobile home is designed to comply with the Federal mobile home construction and safety standards in force at the time of manufacture."
 - (ii) Reference to the structural zone and wind zone for which the home is designed.

F. Temporary Mobile Homes: No temporary singlewide mobile home may be placed on any lot, except for farmworker housing on an operating farm in a New York State Agricultural District.

G. Construction Trailers: Construction trailers may be placed temporarily on construction sites for a period not to exceed the construction period. Such trailers may be used for office, storage, or workshop space, and shall not be used for residential purposes. Construction trailers shall require a Zoning Permit from the Code Enforcement Officer prior to placement.

Section 5.6 Telecommunications Towers and Antennas

5.6-1 Applicability and Purpose The requirements in this section shall govern the location and site plan for commercial communication towers that exceed, and antennas that are installed at a height equal to or in excess of the maximum height allowed in Schedule A above ground level, except for Terrace Mountain where special geographic restrictions apply. Such towers and antennas shall be deemed a special use under this Law and require Site Plan Review. Height limitations for buildings and structures shall not apply to towers and antennas. No tower shall be used, built, moved, reconstructed, changed or altered except after approval of a Special Use Permit and Site Plan in conformity with requirements set forth below.

Exceptions to these requirements are preexisting towers and antennas and new uses that are accessory and incidental to residential and agricultural uses. Any preexisting tower or antenna (that would otherwise be subject to this section) shall be allowed to continue as a non-conforming use without modification. Such non-conforming towers however shall not be extended in height or enlarged. The purpose of the section is to establish guidelines for the placement of commercial towers and antennas.

The goals of this section are to:

- A. Minimize the total number of towers and antennas throughout the community;
- B. Encourage applicants for towers and antennas to locate them in areas where the adverse impact on the community is minimized;
- C. Encourage applicants for towers and antennas to configure them in a way that reduces the adverse visual impact of the towers and antennas; and
- D. Enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently. Shared use of existing towers shall always be preferred to the construction of new towers.

5.6-2 Special Geographic Restriction on Commercial Towers and Antennas

Communication towers are hereby prohibited at or above the eight hundred (800) foot contour line on Terrace Mountain and within the area on the south side of Terrace Mountain bounded by Schoharie Hill Road and Wetzel Hollow Road to where each road intersects the eight hundred (800) foot contour line.

See Glossary for definitions relating to this section including alternative tower structure, antenna, height, and communication tower.

5.6-3 Standards The Zoning Board of Appeals in reviewing the Special Use Permit application and the Planning Board in conducting the Site Plan review shall observe the following performance standards in its review of tower applications:

- A. All towers and accessory facilities shall be sited to have the least adverse visual effect on the environment.
- B. Towers shall be painted and maintained in colors designed to blend into the natural surroundings unless other colors are required by the Federal Aviation Administration.
- C. Structures offering slender silhouettes (such as monopoles or guyed tower) shall be preferable to free standing structures except where such freestanding structures offer capacity for future shared use.

D. At a tower site, the design of the buildings and related structures shall use material colors, textures, screening, and landscaping that will blend the tower's facilities into the natural setting and built environment.

E. If the antenna is installed on a structure other than a tower, the antenna and supporting equipment shall be of a neutral color that is identical to or closely compatible with the color of the supporting structure to minimize visual impacts.

F. Towers shall not be artificially lighted, unless required by the Federal Aviation Administration. If lighting is required, the Planning Board shall review the available lighting alternatives and approve the design that would cause the least disturbance to the surrounding views.

G. Towers and antennas shall comply with all setbacks applicable to the land use area in which they are proposed to be located. The setback must be equal to or exceed one hundred and ten (110%) percent of the height of the tower. Additional setbacks may be required by the Planning Board to contain on-site icefall or debris from tower failure or to preserve privacy of adjoining property, or both.

H. Existing on-site vegetation shall be preserved to the maximum extent possible. No cutting of trees or deposits of fill materials shall take place prior to Planning Board approval. The Planning Board shall require deciduous or evergreen tree plantings to screen portions of the tower from nearby residential property and from public sites known to include important views or vistas. Where the site abuts residential or public property, including streets, the following vegetative screening shall be required. For all towers, the Planning Board shall require at least one row of native evergreen shrubs or trees capable of forming a continuous hedge at least ten feet in height or its equivalent within two years of planting. In poor soil conditions, the Planning Board may require plantings on soil berms to assure plant survival. Plant height in these cases shall include the height of any berm.

I. For new towers, a road and parking will be provided to assure adequate emergency and service access. Maximum use of existing public and private roads shall be made. Road construction shall reduce ground disturbance and vegetative cutting to the toe of fill, the top of cuts, or no more than ten feet beyond the edge of pavement. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce the potential for soil erosion.

J. Height limitations shall be based on the development considerations as described above, except as follows: The maximum tower height measured from ground level shall be sixty (60) feet within the Hamlet of Central Bridge, within five hundred (500) feet of the centerline of state highways, and at or above the twelve hundred (1200) foot contour line. The maximum tower height measured from ground level in all other locations shall be one hundred (100) feet. Alternative tower structures may be up to and including one hundred (100) feet in height in any location.

5.6-4 Federal Requirements All towers must meet or exceed current Federal standards with the authority to regulate towers and antennas. If such standards are changed, then owners of the towers and antennas governed by this section shall bring the towers and antennas into compliance with the revised standards within one 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 antenna at the owner's expense.

5.6-5 Special Application Requirements Any person seeking to construct a tower or antenna shall be required to submit verification of a contracted tenant, and a Special Use Permit application to the Zoning Board of Appeals and a Site Plan approval application to the Planning Board showing all existing and proposed structures and improvements. The Site Plan shall show new and existing roads and grading plans for new facilities and roads. The Site Plan shall also include documentation on tower capacity, justification for the height of any tower or antenna and justification for any land or vegetation clearing.

Additionally the Planning Board may require that the site plan include a completed Visual Environmental Assessment Form and a landscaping plan addressing other standards listed within this section. The applicant shall show the visibility of towers and related facilities from key viewpoints within and outside the municipality. The Planning Board may require the applicant to submit a more detailed visual analysis based on the results of the Visual Environmental Assessment Form.

The Planning Board may require the applicant to submit a visual impact study based on models, computer enhanced graphics, computer simulations or perspective drawings or similar techniques designed to simulate the appearance of tower and antenna in relation to the surrounding environment. The Planning Board may also require the applicant to submit aerial photographs with the proposed tower shown on the photograph. These application requirements may not apply to alternative towers.

Each applicant for a Special Use Permit to construct a new tower shall provide the Zoning Board of Appeals with an inventory of its existing towers that are within the jurisdiction of the Town of Schoharie and adjacent towns and villages, including information about the location, height and design capacity of each tower. The Zoning Board of Appeals and Code Enforcement Officer may share such information with other applicants. By sharing such information the Zoning Board of Appeals and Code Enforcement Officer do not warrant that such other sites are available or suitable. The applicant for a new tower shall be required to submit a letter or report demonstrating a good faith efforts to secure shared use from existing towers and documenting capacity for future shared use of the proposed tower.

The Zoning Board of Appeals, as part of the Special Use Permit application may also require that the applicant demonstrate need for the communications tower and provide proof of a valid FCC license.

5.6-6 Authority to Impose Reasonable Conditions The Zoning Board of Appeals and the Planning Board shall have authority to impose such reasonable conditions and restrictions as are directly related and incidental to the project. Such conditions may include provisions for dismantling and removal of towers and accessory facilities upon abandonment or discontinuance of use for three (3) years or more.

5.6-7 Decision The Zoning Board of Appeals shall issue or deny a Special Use Permit and the Planning Board shall issue or deny a Site Plan approval based on written findings that set forth the relevant environmental impacts of the proposal with respect to the development considerations, balance environmental considerations with social and economic considerations, and provide a reasoned basis for each board's decision. Applications that meet the development considerations shall be approved or approved with reasonable conditions.

Section 5.7 Resource Extraction and Mining

5.7-1 Purpose The extractive resource or mining industry contributes to the economic well-being of the Town. This is provided that mining is undertaken in a manner that does not adversely affect neighbors, other land uses and the environment. The purpose of this section is to allow for extractive resource and mining activities to be carried out in harmony with the community and the environment. This is accomplished by requiring that extractive resource and mining activities undergo site plan review, review as a special permitted use, and review under the State Environmental Quality Review Act in coordination with permitting activities of the New York State Department of Environmental Conservation under the New York State Mined Land Reclamation Act (MLRL) or any successor statute.

Any person who mines or proposes to mine from each mine site at least one thousand (1000) tons or seven hundred fifty (750) cubic yards, whichever is less, of minerals, including peat and topsoil within a period of twelve (12) consecutive months, shall be required to obtain a State Mined Land Reclamation Law permit along with Site Plan Review approval and a Special Use Permit. The Zoning Board of Appeals and the Planning Board shall have authority to review the following in relation to any proposed mine:

1. Ingress and egress to the mine;
2. Routing of trucks;
3. Dust control and hours of operation;
4. Setbacks from property lines
5. Visual impacts, screening including vegetative cutting;
6. Off-site vibrations; and
7. Water quality.

5.7-2 Special Standards The Zoning Board of Appeals and the Planning Board shall review the Special Use Permit and the Site Plan Review application to ensure that the mine or resource extraction activity meets the requirements of this Law and if the mining or extraction activity can be carried out in harmony with surrounding land uses. In judging impacts the Boards shall consider all impacts accruing during the life of the mine or resource extraction activity. The Planning Board and/or the Zoning Board of Appeals may impose conditions on setbacks from property lines, truck traffic, dust control on roads, screening of the mining or resource extraction activity and impacts on water quality.

5.7-3 Preexisting Mines and Resource Extraction Activities: Any mine that is lawfully in existence on or before the effective date this law, and that would otherwise require a Special Use Permit and Site Plan review hereunder, may continue to operate so long as it is subject to a permit under the MLRL. Notwithstanding any other provision of this Land Use Law to such permits, a proposed expansion that would increase the number of cubic yards or tons of mined material would require Site Plan approval and a Special Use Permit. Where the Planning Board and/or the Zoning Board of Appeals undertakes a Site Plan Review or Special Use Permit review of a pre-existing mine it shall review both the proposed expansion and the pre-existing aspects of the mine for the following:

1. Ingress and egress to the mine;
2. Routing of trucks;
3. Dust control and hours of operation;
4. Setbacks from property lines;
5. Visual impacts, screening including vegetative cutting;
6. Off-site vibrations; and
7. Water quality.

5.7-4 Mining and Resource Extraction Do Not Include Natural Gas, Etc. Activities In no event shall 'excavation' or 'mining activities' be construed to mean, be, or include Land Application Facilities, Natural Gas And/Or Petroleum Extraction Activities, Natural Gas And/ Or Petroleum Exploration, Extraction Or Production Wastes Dump, Natural Gas Compression Facility, Natural Gas Processing Facility, Underground Injection, or Underground Natural Gas Storage (as those terms are defined in Article 13 hereof).

Section 5.8 Junkyards; Storage of Certain Wastes, Unregistered Motor Vehicles and Junk Cars

5.8-1 Purpose The purpose of this section is to ensure that junkyards are set back and screened from adjoining landowners and from public rights-of-way and to ensure that they do not pose an environmental threat to natural resources.

5.8-2 Standards

A. Junkyard: The following prohibitions shall apply to new and existing junkyards:

1. Junkyards shall be set back seven hundred (700) feet or more from any property line and nine hundred (900) feet or more from any well or waterway on the same or neighboring property.
2. No junkyard, or display, storage, or collection of junk or junk cars shall be permitted in a location that is visible from adjoining properties or public roads, without a valid permit.

B. Unregistered Motor Vehicles and Junk Cars: It shall be unlawful for any person to store or deposit or cause, suffer or permit to be stored or deposited more than one (1) abandoned, junk or unregistered motor vehicle or part or piece thereof on any private or public property in the Town of Schoharie, except within a garage or other completely enclosed structure, or in an approved junkyard.

C. Site Plan Review Considerations: The Planning Board shall incorporate the following conditions into any site plan approval for junkyards:

(1) Screening and Buffer Areas: Buffering from noise and dust, and screening from visibility shall be provided by a continuous vegetative screening consisting of dense evergreen planting or hedgerow. The height of the border buffering or screening shall be not less than six (6) feet and shall take into consideration the topography of the site area.

(2) Stacking of Stored Material and Visibility: No material shall be stacked, piled or stored above the height of the screening or buffering, planting, or fencing, nor shall material be visible through such border.

(3) Access Drives: Access drives shall be finished with a surface that will assure that it will be maintained free of dust and debris. Surface materials may include oil and chip, compact gravel, or blacktop and be of sufficient width for emergency vehicles.

D. Special Provision Relating to Nonconforming Junkyards: Any lawfully existing junkyards not in conformity with this section must come into conformity with this section within one (1) year from the effective date of this law. Junkyards that are lawfully existing on the effective date of this law may not expand the amount of land they occupied on the effective date of this law.

ARTICLE 6 SPECIAL USE PERMITS

Section 6.1 Purpose and Applicability

6.1-1 Purpose It is the policy of the Town of Schoharie to balance the allowance and encouragement of a variety of uses of land and to foster economic opportunities within the municipal boundaries of the Town, provided that such uses do not unreasonably and adversely affect neighboring properties, the natural environment, the rural and historic character of the Town or the long-term development of the Town. Many uses are, therefore, permitted only upon issuance of a Special Use Permit by the Zoning Board of Appeals in order to ensure that these uses are appropriate to their surroundings and satisfy performance criteria on a case by case basis. In some instances, approval of a Site Plan by the Planning Board is also required. In such cases, the applicant may request that the procedures for the Special Use Permit and Site Plan approval be run concurrently and such request will not be unreasonably denied.

6.1-2 Applicability Uses requiring Special Use Permits are listed for each Land Use District in Schedule A. Accessory uses or structures used in connection with a Special Use Permit use shall be subject to the same Special Use Permit approval requirements as the principal structure or use.

Section 6.2 Required Plans and Submittals

Because the impact of special permit uses varies greatly, the information required to be submitted for a Special Use Permit may vary depending upon the scale, intensity, nature of the proposed use and its proposed location. An applicant for a Special Use Permit shall submit at least one (1) original and four (4) copies of the following together with whatever other information the Zoning Board of Appeals deems appropriate:

- A.** A Town of Schoharie Special Use Permit application form.
- B.** A plot plan drawn to scale with accurate dimensions providing information sufficient to enable the Board to make an informed decision, and an agricultural data statement as defined below.
- C.** A narrative describing the proposed use and operation.
- D.** A short-form or long-form SEQRA Environmental Assessment Form (EAF) with part one (1) completed by the applicant (a long-form EAF is required for all SEQRA Type I actions, but the Zoning Board of Appeals may require a long-form EAF for unlisted actions if the Board deems that the additional information contained on the long-form would be helpful and appropriate under the circumstances of the project proposal).
- E.** The application fee as established by the Town Board, and an escrow deposit for reimbursement of costs of Town consultants (if required).
- F.** The Zoning Board of Appeals may waive or add any fee requirements for an application submission as it deems appropriate in order to accomplish the purposes set forth herein.

Section 6.3 Procedure

6.3-1 Pre-application Meeting It is recommended that before filing an application, the applicant should attend a Zoning Board of Appeals meeting to discuss the nature of the proposed use and to determine the information that will need to be submitted. The purpose of this meeting is for the Applicant and the Board to informally discuss the proposal and the relevant issues involved before the Applicant expends significant time or money in application submittals.

6.3-2 Application

A. If an application is for a parcel or parcels on which more than one use requiring a Special Use Permit is proposed, the applicant may submit a single application for all such uses. The Zoning Board of Appeals may grant the application with respect to some proposed uses and not others. For purposes of reviewing an application (and for SEQRA compliance) all proposed uses on a single parcel or on contiguous parcels shall be considered together.

B. At the first meeting at which an application is first presented as an agenda item, the Zoning Board of Appeals shall determine whether the application is complete for purposes of commencing the review process. If an application is determined to be incomplete, the Zoning Board of Appeals shall notify the Applicant in writing as to what aspects of the application submittal are lacking or are otherwise insufficient to start the process. The time-frames for Zoning Board of Appeals action during the review process shall not commence until the submission of a fully complete application with supporting documents and materials and the determination by the Zoning Board of Appeals that the application is complete.

6.3-3 Application for Area Variance Where a proposed Special Use Permit contains one or more features which do not comply with the dimensional regulations of this local law, application may be made to the Zoning Board of Appeals for an Area Variance pursuant to Article 9 without a decision or determination by the Code Enforcement Officer.

6.3-4 SEQRA Compliance Upon receipt of application materials it deems complete, the Zoning Board of Appeals shall initiate the New York State Environmental Quality Review process by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within twenty (20) days of its acceptance of a completed application, EAF and other supporting materials. Where the proposed action may have a significant effect on the environment, the Zoning Board of Appeals shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this local law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

6.3-5 Referral to County Planning Commission

A. Upon receipt of application materials it deems to be complete, the Zoning Board of Appeals shall refer to the Schoharie County Planning Commission any application for a Special Use Permit affecting real property within five hundred (500) feet of the boundary of the Town of Schoharie, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the

boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, Sections 239-l and 239-m, as amended.

B. No action shall be taken on applications referred to the County Planning Commission until its recommendation has been received, or thirty (30) days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the thirty (30) day requirement for the County Planning Commission's review.

C. A majority-plus-one vote of the Zoning Board of Appeals shall be required to grant any Special Use Permit which receives a recommendation of disapproval from the County Planning Commission because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

6.3-6 Agriculture Data Statement

A. An agriculture data statement is required where the proposed use is located in, or within five hundred (500) feet of, boundaries of an Agricultural District

B. If an agricultural data statement has been submitted, the Secretary of the Zoning Board of Appeals shall, upon receipt of the application, mail written notice of the Special Use Permit application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

6.3-7 Notice and Hearing

A. The Zoning Board of Appeals shall hold a public hearing on a complete Special Use Permit application within sixty two (62) days from the determination of the Zoning Board of Appeals that the application is complete. The time in which a public hearing must be held may be lengthened only upon consent of the Applicant and Zoning Board of Appeals.

B. At least five (5) days prior to the date of such hearing, the Zoning Board of Appeals shall give public notice by causing the publication of a notice of such hearing in the official newspaper and by mailing a notice thereof to all adjoining property owners and to any other property owners in the affected area that the Zoning Board of Appeals may require to be notified.

6.3-8 Criteria In considering and acting on Special Uses, the Zoning Board of Appeals shall consider the public health, safety, and general welfare. The Board shall also consider potential environmental impacts and the comfort and convenience of the public in general, the residents of the proposed development, and the residents of the immediate surrounding area. The Board may prescribe such appropriate conditions and safeguards as may be necessary in order that the results of its action shall, to the maximum extent possible, further the accomplishments of the following objectives:

A. Compatibility: The proposed use is of a character compatible with the surrounding neighborhood, incorporates a site design which preserves the rural character of the Town.

B. Vehicular Access: That proposed access points are adequate in width, grade, alignment, and visibility; are not excessive in number; are located at appropriate distances from intersections or places of public assembly; and satisfy other similar safety considerations.

C. Circulation and Parking: That adequate off-road parking and loading spaces are provided to minimize or, where required, to eliminate the need for parking vehicles on the public highways by any persons connected with or visiting the site of the use; that the interior circulation system is adequate to provide safe accessibility to all required parking spaces; and that adequate separation of pedestrian and vehicular movement is provided.

D. Landscaping and Screening: That all parking, storage, loading, and service areas are reasonably screened at all seasons of the year from the view of adjacent residential areas and that the general landscaping of the site is in character with the surrounding areas. Such screening shall be maintained as a condition of the Special Use Permit.

E. Natural Features: That the proposed use, together with its sanitary and water service facilities, are compatible with the geologic, hydrologic, and soil conditions of the site and the adjacent areas and that existing natural and scenic features are preserved to the maximum extent possible.

6.3-9 Action

A. The Zoning Board of Appeals shall grant, deny, or grant subject to conditions the application for a Special Use Permit within sixty two (62) days after the hearing. Any decision by the Zoning Board of Appeals shall contain written findings explaining the rationale for the decision in light of the criteria contained in Section 6.3-8 of this Local Law.

B. In granting a Special Use Permit, the Zoning Board of Appeals may impose conditions that it considers necessary to protect the health, safety, and welfare of the Town and to achieve the purposes contained in Section 1.5 of this Local Law. These conditions may include increasing dimensional or area requirements, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities and protect open space, requiring the protection of open space of conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.

6.3-10 Expiration, Change of Use, Revocation, and Enforcement

A. A Special Use Permit shall expire if the special permit use or uses cease for more than twenty four (24) consecutive months for any reason, if the applicant fails to obtain the necessary Project Permit or fails to comply with the conditions of the Special Use Permit within eighteen (18) months of its issuance, or if its time limit expires without renewal.

B. A Special Use Permit shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Special Use Permit (as determined by the Code Enforcement Officer in issuing a Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Special Use Permit shall require the granting of a new Special Use Permit or a Special Use Permit amendment.

C. A Special Use Permit may be revoked by the Zoning Board of Appeals if the permittee violates the conditions of the Special Use Permit or engages in any construction or alteration not authorized by the Special Use Permit.

D. Any violation of the conditions of a Special Use Permit shall be deemed a violation of this Local Law, and shall be subject to enforcement action as provided herein.

Section 6.4 Findings Required

In granting or denying Special Use Permits, the Zoning Board of Appeals shall take into consideration the type, scale and intensity of the proposed project, the surrounding area, the possible impact of the proposed project on nearby properties and uses and the requirements and purposes of this Law. The Zoning Board of Appeals shall set forth its findings in writing as part of its decision making process.

Section 6.5 Amendments

The terms and conditions of any Special Use Permit may be amended in the same manner as required to grant a Special Use Permit, following the criteria and procedures in this Section. Any enlargement, alteration, or construction of accessory structures not previously approved shall require a Special Use Permit amendment.

ARTICLE 7 SITE PLANS

Section 7.1 Applicability

Site Plan approval is required for certain uses where Site Plan approval is required as part of the criteria for a Special Use Permit or where Site Plan approval is required standing alone as indicated in the Land Use Chart Schedule A.

Section 7.2 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 their 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. As such, an applicant is encouraged to schedule and attend the Sketch Plan Conference. In order to accomplish these objectives, the applicant should provide the Planning Board with as much information as is practicable; the following is suggested:

- 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;
- C.** A topographic or contour map of adequate scale and detail to show site topography;
and
- 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.

Within thirty (30) days after the Sketch Plan Conference has been held, the Planning Board shall provide the applicant with a list of information to be submitted with the Site Plan application as well as any recommendations that the Planning Board may have with respect to the proposed application.

Section 7.3 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.

7.3-1 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. Other elements integral to the proposed development as considered necessary by the Planning Board.

7.3-2 Waivers If the Planning Board finds that any of the information requirements as set forth above are not necessary to conduct an informed review, it may waive such information requirements as it deems appropriate. Any such waiver shall be made in writing, and shall contain statements of the reasons why the waived information requirements are not necessary for an informed review under the circumstances. The Planning Board may grant such waivers on its own initiative or at the written request (that sets forth the specific requirements that are requested to be waived and the reasons for the requested waiver) of an applicant.

Section 7.4 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.
- K.** For any Site Plan containing residential units, the Planning Board may require the reservation of parkland or payment of a recreation fee pursuant to the Town Law, Section 274-a (6).

Section 7.5 Reimbursable Costs

Costs incurred by the Planning Board for consultation fees or other expenses in connection with the review of a proposed site plan shall be charged to the applicant.

Section 7.6 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 Planning Board.

Section 7.7 Inspection of Improvements

The Code Enforcement Officer shall be responsible for the overall inspection of site improvements including coordination with the planning board and other officials and agencies, as appropriate. If the site is not being developed in strict compliance with the approved site plan and any conditions attached thereto, the zoning officer shall issue a stop work order and demand compliance with the approved site plan and any conditions attached thereto. An approved site plan may not be modified except by the Planning Board upon application for such modification from the applicant.

Section 7.8 Integration of Procedures

Whenever the particular circumstances of proposed development require compliance with either the Special Use Permit procedure in this Zoning Law 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.

Section 7.9 Application for Area Variance

Where a proposed Site Plan contains one or more features that do not comply with the dimensional regulations of this local law, application may be made to the Zoning Board of Appeals for an Area Variance pursuant to Article 9 without a decision or determination by the Code Enforcement Officer.

Section 7.10 SEQRA Compliance

Upon receipt of application materials it deems complete, the Planning Board shall initiate the New York State Environmental Quality Review process (unless the process has been already commenced pursuant to the Special Use Permit process for the same project) by either circulating the application and Environmental Assessment Form to all involved agencies (if coordinated review is undertaken) or by issuing its determination of significance within twenty (20) days of its acceptance of a completed application, EAF and other supporting materials. Where the proposed action may have a significant effect on the environment, the Planning Board shall issue a positive declaration and require the submission of a Draft Environmental Impact Statement (DEIS). No time periods for decision making in this local law shall begin to run until either acceptance of a DEIS as satisfactory pursuant to New York State Department of Environmental Conservation Regulations or the issuance of a negative declaration.

Section 7.11 Referral to County Planning Commission

Upon receipt of application materials it deems to be complete, the Planning Board shall refer to the Schoharie County Planning Commission any application for a Site Plan affecting real property within five hundred (500) feet of the boundary of the Town of Schoharie, the boundary of any existing or proposed County or State park or other recreational area, the boundary of any existing or proposed County or State roadway, the boundary of any existing or proposed right-of-way for a stream or drainage channel owned by the County for which the County has established channel lines, the boundary of any existing or proposed County or State-owned land on which a public building or institution is situated, or the boundary of a farm operation within an agricultural district as defined in Article 25AA of the Agriculture and Markets Law, pursuant to General Municipal Law, Article 12-B, Sections 239-l and 239-m, as amended.

7.11-1 Action No action shall be taken on applications referred to the County Planning Commission until its recommendation has been received, or thirty (30) days have elapsed after its receipt of the complete application, unless the County and Town agree to an extension beyond the thirty (30) day requirement for the County Planning Commission's review.

7.11-2 County Disapproval A majority-plus-one vote of the Planning Board shall be required to grant any Site Plan approval which receives a recommendation of disapproval from the County Planning Commission because of the referral process specified above, along with a resolution setting forth the reasons for such contrary action.

7.11-3 Coordination of Review In the case of a project proposal which also requires a Special Use Permit, every effort shall be made by the Planning Board to avoid duplication of the County referral process. However, such determination shall be made by the Planning Board in cooperation with the Schoharie County Planning Commission, since the Site Plan application may contain issues not addressed in the Special Use Permit process.

Section 7.12 Agriculture Data Statement

A. An agriculture data statement is required where the proposed use is located in or within five hundred (500) feet of the boundaries of an Agricultural District.

B. If an agricultural data statement has been submitted, the Secretary of the Planning Board shall, upon receipt of the application, mail written notice of the Site Plan application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location. The cost of mailing the notice shall be borne by the applicant.

Section 7.13 Planning Board Action on Site Plan

A. 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 Code enforcement Officer. The Planning Board also has the discretion to hold a public hearing on the application if the Planning Board determines that there are factors involved (such as but not limited to potential public controversy, the desirability of input from adjoining property owners or the public at large) that warrants a public hearing. If the Planning Board determines to hold a public hearing, it must be held within sixty two (62) days of the receipt of a complete application and the decision on the Site Plan must be made within sixty two (62) days from the close of the public hearing. The time within which a decision must be rendered may be extended by mutual consent of the applicant and the Planning Board.

B. In approving a Site Plan, with or without modifications, the Planning Board may impose conditions which it considers necessary to protect the health, safety, and welfare of the Town and to achieve the purposes contained in Section 1.5 of this Local Law. These conditions may include increasing dimensional or area requirements, specifying location, character and number of vehicle access points, requiring landscaping, planting and screening, requiring clustering of structures and uses in order to minimize the burden on public services and facilities and protect open space, requiring the protection of open space of conservation value using conservation easements, and requiring action by the applicant (including the posting of performance bonds and furnishing of guarantees) to insure the completion of the project in accordance with the terms and conditions applicable thereto.

C. Upon the approval of the Site Plan, the Code Enforcement Officer has the authority to issue the Zoning Permit upon completion of the development of the site in strict accordance with the approved site plan and any conditions attached thereto.

Section 7.14 Expiration, Change of Use, Revocation, and Enforcement

A. A Site Plan shall expire if the Site Plan use or uses cease for more than twelve (12) consecutive months for any reason, if the applicant fails to obtain the necessary building permit or Certificate of Compliance or fails to comply with the conditions of the Site Plan, or if its time limit expires without renewal.

B. A Site Plan shall apply to the use for which it has been granted, as well as to any subsequent similar use of the property which complies with all terms and conditions of the Site Plan (as determined by the Code Enforcement Officer in issuing a Zoning Permit or Certificate of Compliance) and which does not involve any new construction, enlargement, exterior alteration of existing structures, or changed use of outdoor areas. Any other change to a use allowed by Site Plan shall require the granting of a new Site Plan or an amendment.

C. A Site Plan approval may be revoked by the Planning Board if the applicant or the applicant's successor or assign violates the conditions of the Site Plan approval or engages in any construction or alteration not authorized by the Site Plan approval.

D. Any violation of the conditions of a Site Plan shall be deemed a violation of this Local Law, and shall be subject to enforcement action as provided herein.

Section 7.15 Findings Required

In approving or disapproving Site Plans, the Planning Board shall take into consideration the type, scale and intensity of the proposed project, the surrounding area, the possible impact of the proposed project on nearby properties and uses and the requirements and purposes of this Law. The Planning Board shall set forth its findings in writing as part of its decision-making process.

Section 7.16 Amendments

The terms and conditions of any Site Plan approval may be amended in the same manner as required to approve a Site Plan, following the criteria and procedures in this Article. Any enlargement, alterations, or construction of accessory structures not previously approved shall require a Site Plan Amendment.

ARTICLE 8 NONCONFORMITY, NONCOMPLIANCE

Section 8.1 Nonconformity with Use Dimensional or Density Requirements

8.1-1 Continuance / Discontinuance Subject to the provisions of this section, a nonconforming use or structure may be continued and maintained in reasonable repair, but may be enlarged, altered or converted only as provided for in Section 8.1-4 below. This Section shall not be construed to permit any unsafe use, or to affect any lawful regulation or prohibition of an unsafe use. If however, a nonconforming use or structure is discontinued/abandoned for a period in excess of one (1) year, further use of the property shall conform to this Local Law.

8.1-2 Change If a nonconforming use or structure is replaced by another use or structure, the new use or structure shall conform to this Local Law.

8.1-3 Damage or Destruction If a non-conforming use or structure is damaged or destroyed by any cause to an extent exceeding seventy five (75%) percent of either its floor area or its market value, the future use of the site shall conform to this Local Law. However, a nonconforming single-family dwelling damaged or destroyed to any extent may be rebuilt by the person owning such building at the time of the casualty, provided that construction is begun within twelve (12) months after the casualty and the construction conforms to the original building footprint. No nonconforming use or structure shall be moved or otherwise relocated so as to occupy a different area of land than was occupied at the time of the enactment or amendment of zoning regulations which rendered the use or structure nonconforming in the first place unless such movement or relocation renders the use or structure in conformance with all applicable provisions of this Law.

8.1-4 Enlargement A nonconforming use or structure may be enlarged up to twenty five (25%) percent of its original floor or land area pursuant to a Special Use Permit granted in accordance with Article 6.

Section 8.2 Development

8.2-1 Existing Undersized Lots If a lot of record fails to meet applicable lot size standards as set forth herein, the lot may be developed with any compatible use listed for the zoning district in which such non-conforming lot is located provided that such lot has sufficient width, depth, and area to undertake development that will:

- A. Maintain the required minimum front yard, and if applicable, the minimum stream setback;
- B. Meet or exceed at least two-thirds (2/3) of the required minimum side and rear yard;
- C. Not exceed the maximum permitted lot coverage; and
- D. Otherwise satisfy all applicable provisions of this Law.

A nonconforming lot of record may be subdivided if each and every subdivision of such lot is purchased by the owner or owners of the adjoining properties to increase the size of said owner's or owners' property.

ARTICLE 9 ZONING BOARD OF APPEALS

Section 9.1 Establishment of Zoning Board of Appeals

A. The Town Board shall appoint a Zoning Board of Appeals (ZBA), shall designate its chairperson, and shall provide for such expenses as may be necessary and proper. In the absence of a chairperson, the Zoning Board of Appeals may designate a member to serve as acting chairperson. A member of the Board of Appeals shall not at the same time be a member of the Town Board. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause and after public hearing. Any Zoning Board of Appeals member may be removed for non-compliance with minimum requirements relating to attendance and training as established by the Town Board by local law.

B. Members, except for those appointed to the first Board, shall serve terms of five years. Such terms shall expire at the end of the calendar year. In the creation of the new Zoning Board of Appeals, the appointment of members of the Board shall be for terms so fixed that one member's term shall expire at the end of the calendar year in which such member was initially appointed. The remaining members' terms shall be so fixed that one member's term shall expire at the end of each year thereafter. At the expiration of each original member's appointment, the replacement member shall be appointed for a term of five (5) years.

C. If a vacancy occurs other than by the expiration of a term, it shall be filled by the Town Board for the period of the un-expired term.

Section 9.2 Conduct of Business

A. The Zoning Board of Appeals may employ such clerical or other staff or consulting assistance as may be necessary, provided that it shall not incur expenses beyond the amount of appropriations made available by the Town Board for such purposes.

B. The Zoning Board of Appeals shall have the power to promulgate written rules of procedure, by-laws, and forms in order to fulfill its responsibilities under this Local Law.

C. All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson and at such other times as the Board may determine. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. All meetings of the Zoning Board of Appeals shall be open to the public. The concurring vote of a majority of all members shall be necessary to take action on any matter before it.

D. The Zoning Board of Appeals shall keep minutes of its proceedings showing the vote of each member on every decision. If a member is absent or fails to vote, the minutes shall so indicate. Every rule and regulation, every amendment or repeal thereof, and every order, requirement, decision, interpretation, or determination of the Zoning Board of Appeals shall be filed in the office of the Town Clerk within five (5) business days and shall be a public record.

9.2-1 General Rules - Variances

A. Authorization for Zoning Board of Appeals to Grant Variances: In accordance with Section 267-b of the Town Law of the State of New York, the Zoning Board of Appeals shall have the power upon appeal from a determination by the Code Enforcement Officer or by referral of the Planning Board and after public notice and hearing, to vary or modify the application of any of the provisions of this law relating to the use, construction, or alteration of structures or the use of land, so that the spirit of this law is observed, public safety and welfare secured, and substantial justice done. The specific standards for the grant of use and area variances are set forth below. The definitions of use and area variances are stated in the glossary of this Law.

B. General Application Requirements for Variances: All applications for variances shall be accompanied by three (3) copies of a plot plan, drawn to scale with accurate dimensions, showing the location of existing and proposed structures on the lot. An application for a use variance may require submission of an Agricultural Data Statement. The Zoning Board of Appeals may also request additional information showing the proposed location of buildings and other improvements and natural features.

C. Termination or Lapse of Variance: Any variance that is not exercised within one (1) year of the date it is issued shall lapse without further hearing by the Zoning Board of Appeals.

9.2-2 Use Variances

A. The Zoning Board of Appeals, on appeal from a decision or determination of the Code Enforcement Officer, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed by this law.

B. No use variance shall be granted without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. To prove unnecessary hardship the applicant shall demonstrate that for each and every permitted use under the zoning regulations for the particular district where the property is located, that:

- (1) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
- (2) The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood;
- (3) The requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (4) The alleged hardship has not been self-created.

C. The Zoning Board of Appeals shall consider any Agricultural Data Statement and whether the variance would have an undue adverse impact on the farm operations identified by the Agricultural Data Statement.

D. The Zoning Board of Appeals, in granting use variances, shall grant the minimum variance that it deems necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.

- E.** The Zoning Board of Appeals shall, in granting use variances, impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this law, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

9.2-3 Area Variances

A. The Zoning Board of Appeals shall have the power, upon an appeal from a determination of the Code Enforcement Officer or by referral by the Planning Board that the applicant's proposal can not be approved by reason of its failure to meet the dimensional or area regulations of this Law, to grant area variances from the area or dimensional requirements of this Law.

B. In making its determination, the Zoning 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 neighborhood or community of such grant. In making this determination the Board shall also consider:

- (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 or overlay district; and
- (5) Whether the alleged difficulty was self-created, which shall be relevant to the decision of the Board of Appeals, but which shall not necessarily preclude the granting of the area variance.

C. The Zoning Board of Appeals, in granting of area variances, shall grant the minimum variance that it deems necessary and adequate, while preserving and protecting the character of the neighborhood and the health, safety, and welfare of the community.

D. The Zoning Board of Appeals shall, in granting area variances, impose such reasonable conditions and restrictions as are related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Law, and shall be imposed for the purpose of minimizing any adverse impact the variance may have on the neighborhood or community.

9.2-4 Procedure for Appeals

A. Meetings, Minutes, Records: Meetings of the Zoning Board of Appeals shall be open to the public as required in Article Seven of the Public Officers Law of the State of New York. The Zoning Board of Appeals shall keep minutes of its proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact and shall also keep records of its examinations and other official actions.

B. Filing Requirements: Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the Zoning Board of Appeals shall be filed in the Town Clerk's Office within five (5) business days and shall be a public record.

C. Hearing Appeals: The Zoning Board of Appeals' jurisdiction shall be appellate only and shall be limited to hearing and deciding appeals from and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer or by referral by the Planning Board. The concurring vote of a majority of the members of the Zoning Board of Appeals shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to grant a use variance or area variance. Such appeal may be taken by any person aggrieved or by an officer, department, board or bureau of the Town.

D. Time of Appeal: Such appeal shall be taken within sixty (60) days after the filing in the Town Clerk's office of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer. The appeal shall be taken by filing with the Code Enforcement Officer and with the Town Clerk a notice of appeal, specifying the grounds thereof and the relief sought. Code Enforcement Officer shall forthwith transmit to the Zoning Board of Appeals all the papers constituting the record upon which the action appealed from was taken.

E. Stay Upon Appeal: An appeal shall stop all proceedings relating to the action appealed from, unless the Code Enforcement Officer certifies to the Zoning Board of Appeals that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by a Court of competent jurisdiction. The application for a stay shall be on notice to the Code Enforcement Officer and with due cause shown.

F. Hearing on Appeal: The Zoning Board of Appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.

G. Time of Decision: The Zoning Board of Appeals shall decide the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the Zoning Board of Appeals must render its decision may be extended by mutual consent of the applicant and the Board.

H. Filing of Decision and Notice: The decision or draft minutes of the Zoning Board of Appeals on the appeal shall be filed in the Office of Town Clerk within five (5) business days after the day such decision is rendered, and a copy thereof mailed to the applicant. The minutes, as approved by the Zoning Board of Appeals, shall be filed in the Town Clerk's Office within five (5) business days of the meeting at which the minutes were approved.

I. Notice to Park Commission and County Planning Commission or Agency or Regional Planning Council: At least five (5) days before such hearing, the Zoning Board of Appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred (500) feet of the property affected by such appeal and to the County Planning Commission or agency or regional planning council, as required by Section 239 -m of the General Municipal Law, which notice shall be accompanied by a full statement of such proposed action, as defined in subdivision one of Section 239-m of the General Municipal Law.

J. Compliance with State Environmental Quality Review Act: The Zoning Board of Appeals shall comply with the provisions of the State Environmental Quality Review Act

K. Rehearing: A motion for the Zoning Board of Appeals to hold a rehearing to review any order, decision or determination of the board not previously reheard may be made by any member of the Board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the Board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the Board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

Section 9.3 Expiration of Appeal Decision

Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the Appellant fails to obtain any necessary building or other permit or approval within one (1) year of the date of the decision.

Section 9.4 Grant of Variance

The grant of a variance shall serve as authorization for the Code Enforcement Officer to issue a Building and/or Zoning Permit, provided that the project complies with all applicable provisions of this zoning law and other applicable regulations.

ARTICLE 10 AMENDMENT

Section 10.1 ~~Initiation~~Initiation

The Town Board, upon its own motion, or upon application by one or more property owners, or resolution of the Planning Board or Zoning Board of Appeals, may amend this Zoning Law including the official Zoning Map, as provided herein and in accordance with the provisions of the Municipal Home Rule Law and other applicable State Laws. A property owner or the owner's agent may apply for amendment of this local by filing three (3) complete sets of applications with the Town Board, and two (2) complete sets with the Planning Board. The application shall include a description of the property or properties affected, a map showing the property or properties affected and all properties within a radius of five hundred (500) feet of the exterior boundaries thereof and the applicable filing fee. In the case of a proposed amendment that would apply only to properties that are not immediately identifiable or to a class of properties, no properties need to be identified as affected.

Section 10.2 Referral to Planning Board

Every such proposed change to zoning regulations or district boundary lines shall first be referred to the Planning Board which shall submit a written report to the Town 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:

1. Such change does not conflict with the general purpose, goals and intent of this Law; and
2. Such change is consistent with the Comprehensive Plan

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

Section 10.3 Public Hearing

No such change to zoning regulations or district boundary lines 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.

Section 10.4 Newspaper Notice of Hearing

At least ten (10) 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 and requirements that such proposed change involves.

Section 10.5 Written Notice of Change or Amendment

At least ten (10) days prior to the date of said public hearing, written notice of such proposed change or amendment affecting property within five hundred (500) feet of the boundaries of any adjoining Town or Village shall be mailed to the Clerk of the adjoining municipality. The adjoining municipality 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 mailed to any applicable agency as required in Section 264 of the Town Law.

Section 10.6 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 a report thereon and comply with the provisions of SEQRA.

Section 10.7 Filing

All amendments to this Law shall be filed with the New York State Secretary of State's office.

Section 10.8 Fee for Amendment

Every petition for a change for amendment to this Law shall be accompanied by a fee as established by the Town Board. Reimbursement for technical review, studies or professional assistance in connection with the amendment shall be the responsibility of the applicant.

Section 10.9 Adoption

The Town Board may adopt amendments to this Zoning Law by a majority vote of its membership, except in the case of disapproval by the County Planning Commission, in which case a favorable vote of four (4) of the Town Board members shall be required for approval of any amendment. A copy of the decision shall be promptly mailed to the applicant.

Section 10.10 Local Protest

The favorable vote of four (4) of the Town Board members shall be required for approval of any amendment which is subject to a written protest signed by twenty (20%) percent or more of the owners of the land in any of the following areas:

- A. The land area included in the proposed amendment.
- B. The land area immediately adjacent to the area proposed to be changed and extending one hundred (100) feet therefrom.
- C. The land area directly opposite the area proposed to be changed and extending one hundred (100) feet from the road frontage of the opposite land.

Section 10.11 Effective Date

Each amendment adopted by the Town Board shall take effect when filed with the New York State Secretary of the State's office pursuant to the Municipal Home Rule Law of the State of New York.

ARTICLE 11 CLUSTER SUBDIVISION DEVELOPMENT

Section 11.1 Authority

A. Pursuant to the powers granted under Section 278 of the Town Law, The Town Board of the Town of Schoharie hereby authorizes the Planning Board to vary the zoning requirements of this Law simultaneously with the approval of any proposed residential development or subdivision plat within the Town, subject to the purposes, standards and procedures set forth in this Article.

B. The Planning Board may require and subsequently approve such variations in the zoning requirements where it finds that any of the following conditions exist on the development site and that non-clustered development of the site may impair conservation of the environment or preservation of the neighborhood character:

1. Slopes over fifteen (15) percent on twenty five (25%) percent or more of the area of the site;
2. Wetlands, including regulated and non-regulated freshwater wetlands;
3. Flood-prone areas as shown on New York State Soil Conservation Service soil maps or Federal Emergency Management Agency (FEMA) maps;
4. Historic structures or areas of local, state or national importance, whether or not on a state or national register of historical structures or places;
5. Unique or unusual natural or geological formations;
6. Lakes, ponds or other significant existing or potential recreation areas;
7. Rare, threatened or endangered vegetation or significant habitats of threatened or endangered wildlife, as determined by the New York State Department of Environmental Conservation;
8. Significant scenic views or vistas as indicated in the Comprehensive Plan; and/or
9. The significant reduction or substantial impairment of open space areas, agricultural lands, forest lands, ridge lines or other natural features determined to be important to the Town by the Planning Board.

C. The Planning Board may adopt rules and regulations setting forth additional criteria pursuant to which such a cluster development application may be required.

Section 11.2 Purposes

The purposes of cluster developments are to enable and encourage flexibility of design and development of land in such a manner as to:

- A.** Promote the most appropriate use of land;
- B.** Facilitate the adequate and economical provision of streets and utilities;
- C.** Result in improved living and working environments;
- D.** Preserve open space and the natural and scenic qualities of open lands;
- E.** Preserve significant tracts of forested lands;
- F.** Preserve active agricultural lands;
- G.** Protect flood plains, wetlands, lakes, ponds, streams and other natural features; and
- H.** Promote development in harmony with the goals and objectives of the Comprehensive Plan.

Section 11.3 Location

The provisions of this Article shall apply to all Zoning Districts.

Section 11.4 Density and Development Standards

A. Density: In the approval of a cluster subdivision, the maximum density may exceed the density which could be permitted, in the Planning Board's judgement, if the land were subdivided into lots conforming to the minimum lot size, density and other requirements otherwise applicable to the district or districts in which such land is located. Except as specified herein all development standards and controls normally applicable to residential subdivisions shall also be applicable to cluster developments.

B. Sketch Plan: The applicant shall submit a sketch plan for a conventional subdivision conforming to the minimum lot size and standards otherwise applicable to the district or districts in which the subdivision is located in order to establish the number of dwelling units permitted in a clustered development. The area of lands which may be required for parks, playgrounds or recreation lands in a clustered subdivision shall in no case exceed the area of such lands which would be required in a non-clustered subdivision, The area of lands that would, in a non-clustered subdivision, be required for parks, playgrounds or recreational lands pursuant to the Town of Schoharie Subdivision Regulations shall be excluded in determining the number of dwelling units permitted in a cluster development.

C. Development Standards:

- 1. Vehicular Access:** At least two (2) means of vehicular access shall be provided for cluster developments of twenty (20) dwelling units or more.
- 2. Maximum Coverage:** The permitted gross building coverage on any cluster development site shall not exceed fifteen (15%) percent of the gross land area.
- 3. Minimum Lot Size:** The minimum lot size allowed in a cluster development shall be determined by the Planning Board.

Section 11.5 Open Space Requirements

- A.** The setting aside of open space, forested land, or active agricultural land in a cluster subdivision shall in no case preclude the Planning Board from requiring the dedication of parks, playgrounds or recreation lands within a subdivision pursuant to the Town of Schoharie Subdivision Regulations.
- B.** Lands set aside in a cluster subdivision for parks, playgrounds or recreation purposes shall provide in such a manner that the lands are useable for recreation or other activities and are accessible to all residents of the subdivision or, where such lands have been conveyed to the Town, accessible to the public.
- C.** If open space, forested lands, or recreational lands set aside in a cluster subdivision are not dedicated to the public use, such areas shall be protected by legal arrangements, satisfactory to the Planning Board, sufficient to assure its maintenance and preservation of the areas for their intended purposes. Covenants or other legal arrangements shall specify: ownership of the cluster open space; method of maintenance; responsibility for maintenance; maintenance taxes and insurance; compulsory home owners association membership and compulsory assessment provisions, where applicable; guarantees that any association formed to own and maintain cluster open space will not be dissolved without prior consent of the Planning Board; and, any specifications deemed necessary by the Planning Board.
- D.** Where active agricultural lands are set aside in a cluster subdivision, such lands may remain in active agricultural use. In approving such a cluster subdivision, the Planning Board shall consider the potential incompatibility of residential and agricultural uses in establishing appropriate screening, buffer areas, setback or other requirements.

Section 11.6 Procedure

Notwithstanding any requirements established in this Article, the proposed site plan of a cluster subdivision shall be subject to the application procedures established in the Town of Schoharie Subdivision Regulations and shall be subject to public review at the public hearing or hearings held pursuant to those regulations.

ARTICLE 12 PLANNED DEVELOPMENT DISTRICTS - PDD

Section 12.1 Procedure for Planned Development Districts

- ~~(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 streets 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 proposed water and sewage disposal systems, a general statement of proposed financing, and an indication of the expected timetable for development.~~
- ~~(1) **Developer's Conference:** Upon receipt of the Preliminary Proposal the Town Board shall forward it to the Planning Board for approval or disapproval. Within forty five (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, they 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 a detailed explanation of the basis for the Planning Board's decision.~~
- ~~(2) **Planning Board Recommendation:** Upon receipt of the applicant's statement of his intention to comply with the established conditions, the Planning Board shall, within thirty (30) days, forward to the Town Board its recommendation to modify the Zoning Law and establish 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.~~
- ~~(3) **Conditional Approval:** Within forty five (45) 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 (10) 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 (1) vote.~~

~~(4) **Final Development Plan:** Upon receiving conditional approval from the Town Board the applicant shall prepare a Final Development Plan for submission to the Planning Board. Such submission shall satisfy all 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 Code Enforcement Officer. This shall constitute authorization for the applicant to proceed with the Planned Development.~~

~~(5) **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 the 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 Article 2 of this Law for that portion which has been completed.~~

Section 12.2 Planned Development Guidelines

In reviewing proposals for the Planned Development District the Planning Board will be guided generally by the following standards:

~~(a) The proposed district should be at least three (3) acres in area and the overall density of any residential areas should be no more than three (3) dwellings per gross acre.~~

~~(b) At least thirty percent (30%) of the gross area of the district should be devoted to open space and recreational area.~~

~~(c) Proposed nonresidential uses shall be appropriate in size and suitability located and shall not create any detrimental influences inside and 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 the district 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 affects on the development itself or on the surrounding area.~~

~~(h) Other conditions imposed by the Planning Board.~~

12.1- Applicability and Purposes

(A) A planned development district (“PDD”) is the development of a track of land that is appropriated for and will be designed to properly accommodate a higher density of residential uses, mixed residential and commercial uses, specialty uses such as senior housing, large scale uses, or light industrial use, not otherwise permitted in the underlying zoning district. The purpose of a PDD is to create a “Floating Zone” that can be applied to a specific tract of land that encompasses an area and location of at least three (3) acres. Additionally, the PDD concept fulfills the goals of the Town’s Comprehensive Plan by allowing for:

- A more desirable living and working environment than may be possible through the strict application of land use regulations;
- Developers to use more creative approaches in their development of land;
- A more efficient and desirable use of open land; and

(B) The establishment of a PDD is a legislative act akin to a rezoning. When enacted, a PDD constitutes an amendment to this local law and the accompanying land use map. As a consequence, the establishment of a PDD requires the approval of the Town Board through the adoption of a local law. Because the establishment of a PDD is a legislative act, the Town Board retains and exercises the same discretion in deciding whether to establish a PDD as it does for any other legislative act. This means that the Town Board may deny a PDD approval for any constitutional reason. On the other hand, the Town Board may adopt a PDD only if it complies with the standards set forth in this Article.

12.2 – Planned Development Districts Previously Established

(A) The following PDD’s have been established by the Town Board:

(1) INSERT

(B) The requirements for these PDD’s are on file in the Town Clerk’s office

12.3- Procedure for Creation of a New Planned Development District

(A) Any new PDD shall be created by the Town Board in accordance with the following procedures:

- (1) An applicant may petition the Town Board for the creation of a new PDD by submitting to the Town Clerk an original and twelve (12) copies of a signed application which shall contain at least the following information and documents:

 - (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 streets 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 commercial, industrial or residential housing proposed, open space to be provided, the proposed water and sewage disposal systems, a general statement of proposed financing, and an indication of the expected timetable for development.
 - (c) A full Environmental Assessment form, prepared by a licensed professional engineer or other licensed professional, to assist the Town Board in its determination of environmental significance under the New York State Environmental Quality Review Act.
 - (d) A fee in an amount to be determined by the Town Board which will reimburse the Town for the expenses paid by the Town to the Town engineer and/or other designated Town consultants for reviewing the application.
 - (e) Where the applicant is not the owner of the subject parcel(s), proof of consent of the owner to the application.
 - (f) Any other information or documentation required by this Article.
- (2) The Town Clerk shall forthwith file the original of the application and forward the copies as follows to: two (2) to the Town Supervisor, who shall in turn forward one (1) copy to an engineer retained by the Town Board for review and recommendations; one (1) to each remaining Town Board member; one (1) to the Town Attorney or his designee; three (3) to the Chairman of the Town Planning Board; and one (1) to the Schoharie County Planning & Development Agency, with a request for a report and recommendation when required by the General Municipal Law section 239-m.
- (3) The Town Board shall consider the application at its first regular meeting occurring at least ten (10) days following the filing of a complete application with the Town Clerk or at such other time and date as the Town Board shall determine. The Town Board shall also discuss the application with the applicant and shall request any additional information it needs to consider the application. The Town Board may schedule a public workshop to discuss the application with the applicant and the Town Planning Board.
- (4) The Town Board shall hold a public hearing at its next regular meeting after receipt of the recommendation (if any) from the Town Planning Board or at any other time and date it shall determine. Notice of the public hearing shall be published in the official newspaper of the Town at least ten (10) days prior thereto.
- (5) The Town Board shall take whatever steps are necessary to comply with the New York State Environmental Quality Review Act, and the public hearing on the application may be combined with a public hearing on any draft environmental impact statement which the Town Board may require.

- (6) At least ten (10) days prior to the public hearing, the applicant shall send notice thereof by certified mail, return receipt requested, to the owners of record of all properties within 500 feet of the proposed boundaries of the PDD, or such other distance as the Town Board may deem advisable. Prior to the public hearing, the applicant shall submit to the Town Clerk an affidavit sworn and subscribed before notary public containing the following information: the names and addresses of all such property owners; a statement verifying that all such property owners' names and addresses are contained on the list; and a statement that all such property owners were properly served with subject notice of public hearing. The applicant shall simultaneously submit the certified mail return receipt for all property owners served along with the affidavit.
- (7) The cost of preparing, publishing and mailing the required notices shall be borne by the applicant. The Town Board may cancel the public hearing if the applicant fails to submit all of the required information.
- (8) The Town Board shall conduct the public hearing, affording all interested persons an opportunity to speak. At the conclusion of the public hearing, the Town Board shall direct the applicant to submit any additional information it determines is necessary to make a determination of the application, if any. The Town Board shall formally act on said application no later than sixty-two (62) days after the close of the public hearing.
- (9) Prior to acting upon said application, the Town Board shall obtain a written recommendation from the Planning Board as to whether the PDD should be created. The Planning Board shall furnish such recommendation within forty-five (45) days after a request therefore from the Town Board. If the Planning Board fails to provide such recommendation within the 45 day period, then the Town Board shall be free to proceed with the application. Any recommendation offered by the Planning Board shall be advisory only and shall not be considered to be binding upon the Town Board.
- (10) In the event the Town Board creates a new PDD, the Town Board shall cause the Town of Schoharie Zoning Map to be amended accordingly and shall forward copies of its determination to the Town Planning Board.

Section 12.4 Standards for the Creation of a new PDD

- (A) The Town Board shall consider and make findings regarding each of the following factors before adopting a local law creating a new PDD:

 - (1) Compliance with the Comprehensive Plan;
 - (2) Compatibility with the surrounding area;
 - (3) Harmony with the character of the neighborhood;
 - (4) Need for the proposed development;
 - (5) The effect of the proposed PDD upon the immediate area;
 - (6) The effect of the PDD on the future development of the area;
 - (7) Whether the land surrounding the PDD can be planned in coordination with the PDD;

(8) Whether the existing and proposed streets are adequate to carry anticipated traffic in and around the proposed PDD;

(9) Whether the PDD makes it possible for the creation of a creative, innovating and efficient use of the property than would occur over the existing land use regulations.

(B) In reviewing proposals for the PDD the Town Board will be guided generally by the following standards:

(1) A proposed district must be at least three (3) acres in area and the overall density of any residential areas should be no more than three (3) dwellings per gross acre.

(2) At least thirty percent (30%) of the gross area of the district should be devoted to open space and recreational area.

(3) Proposed nonresidential uses shall be appropriate in size and suitability located and shall not create any detrimental influences inside and outside the boundaries thereof.

(4) Approved utility support systems (water, sewers, electricity) shall be required. Electrical distribution and telephone lines shall be put underground.

(5) An approved storm drainage system shall be provided which will not be detrimental to the surrounding area.

(6) All provisions of this local law affecting signs and off-street parking shall be complied with.

(7) Development in the district shall be protected by such reasonable and appropriate safety measures, devices, screening or yards as may be required by the Town Board in order to avoid or minimize any adverse effects on the development itself or on the surrounding area.

(8) Other conditions deemed appropriate and necessary by the Town Board.

(9) Additional standards for certain nonresidential uses set forth in Sections ..

12.5. Site Plan Review and Special Use Permits Required

The Town Board's adoption of a PDD does not constitute site plan approval; only approval for the type(s) of uses proposed to be placed in the PDD. The Town Board approves the general outlines of the plan and establishes the use(s) that are allowable in the PDD. Permits and/or site plan review for uses(s) in an approved PDD are required for certain non-residential uses. Special Use Permits and site plan review may also be required by the Town Board at the time a new PDD is created. Where the Town Board determines that a use in an approved PDD shall be permitted only upon the issuance of a Special Use Permit by the Zoning Board of Appeals, the provisions of Article 6 shall apply. Where the Town Board determines that site plan approval is required as part of the criteria for such Special Use Permit or where the Town Board determines that site Plan approval is required standing alone, the provisions of Article 7 shall apply.

Section 12.53 Subdivision in a Planned Development District

If part of a ~~PDD Planned Development~~ proposal involves the subdivision of land into smaller parcels for sale to individual owners, Site Plan approval by the Planning Board shall be required and the Site Plan review required for the PDD shall suffice for Planning Board review under the Town of Schoharie 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 Article 7 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 of Schoharie Subdivision Regulations.

Article 13 Solar Siting

13.1 Purpose and Intent. Solar energy is a renewable and non-polluting energy resource that can prevent fossil fuel emissions and reduce a municipality's energy load. Energy generated from solar energy systems can be used to offset energy demand on the grid where excess solar power is generated. This Article aims to promote the accommodation of solar energy systems and equipment and the provision for adequate sunlight and convenience of access necessary therefor, and to balance the potential impact on neighbors when solar collectors may be installed near their property while preserving the rights of property owners to install solar energy systems without excess regulation. In particular, this law is intended to apply to free standing, ground mounted, or pole mounted solar energy system installations based upon certain placement.

13.2 Applicability

- (A) The requirements of this Article shall apply to all solar energy system and equipment installations modified or installed after the effective date of this local law.
- (B) Solar energy systems for which a valid building permit has been properly issued or for which installation has commenced prior to the effective date of this Article shall not be required to meet the requirements of this Article except in accordance with §§5(D), (E) and (F).
- (C) All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and standards as stated in the State Building Code and Town Code.
- (D) Solar collectors, unless part of a Solar Farm or Solar Power Plant, shall be permitted only to provide power for use by owners, lessees, tenants, residents, or other occupants of the premises on which they are erected, but nothing contained in this provision shall be construed to prohibit "collective solar" installations or the sale of excess power through a "net billing" or "net-metering" arrangement in accordance with New York Public Service Law § 66-j or similar state or federal statute.

13.3 Permit Required

- (A) No Small Scale solar energy system or device shall be installed or operated in the Town except in compliance with this section.
- (B) The fees for all building permits required pursuant to this Local Law shall be paid at the time each building permit application is submitted in such reasonable amount as the Town Board may by resolution establish and amend from time to time.
- (C) Rooftop and Building-Mounted Solar Collectors. Rooftop and building mounted solar collectors are permitted in all zoning districts in the Town subject to the following conditions:
 - (1) Building permits shall be required for installation of all rooftop and building-mounted solar collectors, except, building permit shall not be required for Flush-Mounted Photovoltaic Panels.
 - (2) Rooftop and building-mounted solar collectors shall not exceed the maximum allowed height of the principle use in any zoning district.
 - (3) In order to ensure firefighter and other emergency responder safety, except in the case of accessory buildings under 1,000 square feet in area, there shall be a minimum perimeter area around the edge of the roof and structurally supported pathways to provide space on the roof for

walking around all Rooftop and Building Mounted Solar Collectors. Additionally, installations shall provide for adequate access and spacing in order to:

- (i) Ensure access to the roof;
- (ii) Provide pathways to specific areas of the roof;
- (iii) Provide for smoke ventilation opportunity areas; and
- (iv) Provide emergency egress from the roof.

(4) Exceptions to the requirements in subsection (3) above may be requested where access, pathway or ventilation requirements are reduced due to:

- (i) Unique site specific limitations;
- (ii) Alternative access opportunities (as from adjoining roofs)
- (iii) Round level access to the roof area in question;
- (iv) Other adequate ventilation opportunities when approved by the Code Enforcement Officer;
- (v) Adequate ventilation opportunities afforded by panel set back from other rooftop equipment;
- (vi) Automatic ventilation device; or
- (vii) New technology, methods, or other innovations that ensure adequate emergency responder access, pathways and ventilation opportunities.

(D) Building-Integrated Photovoltaic (BIPV) Systems: BIPV systems are permitted in all zoning districts and shall be shown on the plans submitted for the building permit application for the building containing the system.

(E) Ground-Mounted and Free Standing Solar Collectors: Ground-mounted and free standing solar collectors are permitted as accessory structures in all zoning districts subject to the following conditions:

- (1) Building permits are required for the installation of all ground-mounted solar collectors.
- (2) The location of the solar collector meets all applicable setback requirements for accessory structures in the zoning district in which it is located.
- (3) The height of the solar collector and any mounts shall not exceed 20 feet when oriented at maximum tilt.
- (4) Solar energy equipment shall be located in a manner to reasonably minimize view blockage for surrounding properties and shading of property to the north, while still providing adequate solar access for collectors.
- (5) Freestanding solar energy collectors shall be screened when possible and practicable through the use of architectural features, earth berms, landscaping, or other screening which will harmonize with the character of the property and surrounding area.
- (6) The area beneath ground mounted and freestanding solar collectors shall be included in calculating whether the lot meets maximum permitted Lot Building Coverage and Lot Surface Coverage Requirements for the applicable District, notwithstanding that the collectors are not "buildings".

(F) Solar-Thermal Systems: Solar-thermal systems are permitted in all zoning districts subject to the following condition:

(1) Building permits are required for the installation of all solar-thermal systems.

(2) Ground mounted and free standing solar-thermal systems shall be subject to the same requirements set forth in subsection D above for Ground Mounted and Free Standing Solar Collectors.

(G) Solar energy systems and equipment shall be permitted only if they are determined by the Town not to present any unreasonable safety risks, including, but not limited to, the following:

1. Weight load;

2. Wind resistance; and

3. Ingress or egress in the event of fire or other emergency.

(H) Solar Collectors and related equipment shall be surfaced, designed and sited so as not to reflect flare onto adjacent properties and roadways.

13.4 Safety

(A) All solar collector installations must be performed by a qualified solar installer.

(B) Prior to operation, electrical connections must be inspected by the Town Code Enforcement Officer and by an appropriate electrical inspection person or agency, as determined by the Town.

(C) Any connection to the public utility grid must be inspected by the appropriate public utility.

(D) Solar energy systems shall be maintained in good working order.

(E) Rooftop and building-mounted solar collectors shall meet New York's Uniform Fire Prevention and Building Code standards.

(F) If solar storage batteries are included as part of the solar collector system, they must be placed in a secure container or enclosure meeting the requirements of the New York State Building Code when in use and when no longer used shall be disposed of in accordance with the laws and regulations of Town and other applicable laws and regulations.

(G) If a solar collector ceases to perform its originally intended function for more than 12 consecutive months, the property owner shall remove the collector, mount and associated equipment by no later than 90 days after the end of the twelve-month period.

13.5– Solar Farms and Solar Power Plants. Solar Farms and Solar Power Plants shall only be permitted a Planned Development District (“PDD”) created by the Town Board pursuant to Article 12 of this Local Law and will require site plan review by the Planning Board pursuant to Article 7 of this Local Law. It is the intention of this section to permit a Solar Farm or Solar Power Plant PDD at any location or locations deemed appropriate by the Town Board; provided however, that the Town Board shall not make such designation (i) unless the receiving district is in an zoning district; and (ii) until the Town Board considers the other factors and standards for the creation of a PDD under this Local Law. Notwithstanding the foregoing, Solar Farms and Solar Power Plants are hereby prohibited at or above the eight hundred (800) foot contour line on Terrace Mountain and within the area on the south side of Terrace Mountain bounded by Schoharie Hill Road and Wetzel Hollow Road to where each road intersects the eight hundred (800) foot contour line.

13.6 Performance Standards. The Town Board in reviewing a petition for the creation of a PDD for a Solar Farm or Solar Power Plant and the Planning Board in conducting the Site Plan review shall observe the following performance standards as part of its review:

(A) Solar farms and solar power plans shall be enclosed by perimeter fencing to restrict unauthorized access at a height of 8 ½ feet.

(B) The manufacturer's or installer's identification and appropriate warning signage shall be posted at the site and clearly visible.

(C) Solar Farm and solar power plant buildings and accessory structures shall, to the extent reasonably possible, use materials, colors, and textures that will blend the facility into the existing environment.

(D) Appropriate landscaping and/or screening materials may be required to help screen the solar farm or solar power plant and accessory structures from major roads and neighboring residences.

(E) The average height of the solar panel arrays shall not exceed twelve (12) feet.

(F) Solar Farm and Solar Power Plant panels and equipment shall be surfaced, designed and sited so as not to reflect glare onto adjacent properties and roadways.

(G) On-site power lines shall, to the maximum extent practicable, be placed underground.

(H) The following requirements shall be met for decommissioning:

(1) Solar farms and solar power plans which have not been in active and continuous service for a period of 1 year shall be removed at the owners or operators expense.

(2) The site shall be restored to as natural a condition as possible within 6 months of the removal.

ARTICLE 14 – WIND ENERGY FACILITIES

14.1 Purpose and Applicability. The purpose of the law is to provide for the construction and operation of Wind Energy Facilities in Town of Schoharie, subject to specific conditions that will protect the public health, safety and welfare. The requirement of this Article shall apply to all Wind Energy Facilities proposed, operated, modified, or constructed after the effective date of this 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 may have a rated capacity of not more than one (2) KW and which are intended primarily to reduce consumption of utility power at the situated location.

12.2 Special Geographic Restriction. All Wind Energy Facilities are hereby prohibited at or above the eight hundred (800) foot contour line on Terrace Mountain and within the area on the south side of Terrace Mountain bounded by Schoharie Hill Road and Wetzel Hollow Road to where each road intersects the eight hundred (800) foot contour line.

14.3 Wind Energy Facility Planned Development District. Wind Energy Facilities, except Small Wind Turbines and Wind Measurement Towers may only be permitted in a Wind Energy Facility PDD created pursuant to Article 12 of this Local Law. It is the intention of this section to permit a Wind Energy Facility PDD at any location or locations deemed appropriate by the Town Board; provided however, that the Town Board shall not make such designation (i) unless the receiving district is in an _____ zoning district; and (ii) until the Town Board considers the other factors and standards for the creation of a PDD under this law.

14.3-1 Procedure for Creation of a New Wind Energy Facility Planned Development District.

- (A) All new Wind Energy Facility PDD's shall be created by the Town Board in accordance with the procedure for the creation of a new PDD set forth in Article 12 Local Law. The Town Board may create a new Wind Energy Facility PDD only if it complies with the general standards applicable to all PDD's set forth this Article 12 and the specific standards for Wind Energy Facility PDD's set forth in this Article.
- (A) In addition to the information and documents required by Article 12, a petition for the creation of a Wind Energy Facility PDD shall include the following:
- (1) 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.
 - (2) A site plan prepared by a licensed professional engineer including:
 - (i) Property lines and physical dimensions of the site;
 - (ii) 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 1 ½ times the total height of such wind turbines, whichever shall be greater.
 - (iii) Location and elevation of each proposed wind turbine.
 - (iv) 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.
 - (v) Locations of proposed buffers
 - (vi) Location of the nearest residential structure(s) on the Site and located off the Site, and the distance from the nearest proposed wind turbine.
 - (vii) All proposed facilities, including access roads, electrical substations, storage or maintenance units, and fencing.
 - (3) 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.
 - (4) A lighting plan showing any FAA-required lighting and other proposed lighting. Lighting shall be directed up and out, not down.
 - (5) 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 Schoharie Town Board on the recommendation of its Town Engineer or consultants.

- (6) 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.
- (7) 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.
- (8) 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.
- (9) List of property owners, with their mailing addresses, within 2,000 feet of the outer boundaries of the proposed Site.
- (10) A complaint resolution process to address complaints from nearby residents. The process shall include use of an independent non-binding 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.
- (11) A transportation plan (see section __, below) 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.
- (12) 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:
- (13) 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 cannot 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.
- (14) A visual impact study of the proposed wind turbines as installed which meets the requirements of the New York State Department of Environmental Conservation's visual impact assessment. This study 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.
- (15) 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.

- (16) A noise analysis by a New York State licensed engineer including:
- (i) 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;
 - (ii) The manufacturer's data and standards for all structures, including designed noise levels and the noise levels determined by testing in the field;
 - (iii) 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 locations within one (1) mile of the Site boundary to be selected by the engineer and subject to Planning board review;
 - (iv) 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; and
 - (v) 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.
- (17) 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 **Town Board** with the applicant paying all fees.
- (18) 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.
- (19) 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.
- (20) 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.
- (21) 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.

- (22) An assessment, pre- and post-installation, of possible stray voltage problems on the Site and neighboring properties within one (1) miles of the project boundary to show what properties need upgraded wiring and grounding.
- (23) A geotechnical report that includes soils engineering and engineering geologic characteristics of the Site based on Site sampling and testing, grading criteria for ground preparation, cuts and fills, soil compaction, and a slope stability analysis.
- (24) A statement signed under penalty of perjury that the information contained in the application is true and accurate.

14.3-3 Permit Requirement.

- (A) No Wind Energy Facility shall be constructed, reconstructed, modified, or operated in a Wind Energy Facility PDD except by first obtaining a Wind Energy Facility Permit issued by the Town Board. 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 turbines utilized solely for agricultural operations.
- (C) Replacement in-kind or modification of a Wind Energy Facility may occur without Town 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 sound pressure level/noise produced by the wind turbine.
- (D) Transfer. No transfer of any Wind Energy Facility or Wind Energy Facility Permit, or sale of the entity owning such facility shall eliminate the liability of an applicant or of any other party under this law.

14.3-4 - Application Review Process

- (A) The Town Board shall review and consider the same information as that required for the creation of a Wind Energy Facility PDD under subsection _____ of this section. The permit application may be combined with the petition for creation of a Wind Energy Facility PDD when submitted to the Town Board. The Town Board shall require the applicant to establish an escrow fund which will reimburse the Town for expense paid by the Town to designated Town consultants for reviewing the application.
- (B) Applications for Wind Energy Facility Permits shall be reviewed in accordance with the procedure set forth in subsection (C) below; unless the application is submitted in conjunction with a petition for the creation of the Wind Energy Facility PDD pursuant to Article 12, in which case the less restrictive application review timeframe for the creation of a Wind Energy Facility PDD shall control. These time periods may be extended by the Town Board for just cause.
- (C) Review Procedure
 - (1) Applicants must arrange a pre-application meeting with the Town Board.
 - (2) Ten (10) 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.
 - (3) The Town Board shall, within forth-five (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 unless an extension between the Town Board and the Applicant is

agreed to. Upon submission of a complete application, the Town Board shall proceed with its review.

(4) The Town Board shall hold at least one public hearing on the application. Notice shall be published in the Town's official newspaper, no less than ten (10) days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication shall be required. The public hearing may be combined with public hearing 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.

(5) Notice of the project shall also be given, if applicable, to the Schoharie County Planning Commission, as required by General Municipal Law § 239-m.

(D) 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 Town Board may approve, approve with conditions, or deny the Wind Energy Facility Permit application, in accordance with the standards set forth in this Article. The Town Board may also impose financial guarantee and inspection requirements and require permit renewals as part of any approval. Any denial shall be in writing setting forth competent reasons for such denial with references to relevant sections of this law.

14.3-5 Fees and Escrow.

(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 Town Board may hire any consultant and/or expert necessary to assist the Town in reviewing and evaluating and application for the creation of a Wind Energy Facility PDD and Wind Energy Facility Permit, 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.

(C) The initial deposit shall be \$7,500 and shall be placed with the Town when there is a petition for the creation of a Wind Energy Facility PDD or Wind Energy Facility Permit, whichever is earlier. 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.

14.3-7 Wind Energy Facility Development Standards and Safety Standards

(A) Development Standards. The following standards shall apply to Wind Energy Facilities to be constructed and operated in an approved PDD:

(1) 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.

- (2) 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 Schoharie Planning Board. Applications may be jointly submitted for wind turbine and telecommunications facilities.
- (3) No advertising signs are allowed on any part of the Wind Energy Facility, including fencing and support structures.
- (4) 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.
- (5) 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.
- (6) Guy wires shall not be permitted except to address unique safety issues and then only with specific permission by the **Town Board in the form of a waiver.**
- (7) 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.
- (8) All construction debris shall be removed from the Site or otherwise disposed of in a manner acceptable to the **Town Board.**
- (9) 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.
- (10) Wind turbines shall be located in a manner that minimizes significant negative impacts on rare animal species in the vicinity.
- (11) 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 **Town Board** on the advice of the Town Engineer and other Town consultants.

(B) Required Site Safety Measures - The safety measures shall apply to Wind Energy Facilities to be constructed and operated in an approved PDD:

- (1) 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.
- (2) 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.

- (3) 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.
- (4) 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.
- (5) The minimum distance between the ground and any part of the rotor or blade system shall be 30 feet.
- (6) 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.

(C) Traffic Routes and Road Maintenance. The following traffic and road maintenance requirements apply to Wind Energy Facilities to be constructed and operated in an approved PDD:

- (1) Construction and delivery vehicles for Wind Energy Facilities shall propose, and the Town 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.
- (2) 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 may be required prior to the issuance of any building permit in an amount, determined by the Town Highway Superintendent, sufficient to compensate the Town for any damage to Town 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.
- (3) 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.

(D) Setbacks, Noise and Height. The following Setback, Noise, and Height requirements apply to Wind Energy Facilities to be constructed and operated in an approved PDD:

- (1) Each wind turbine shall be set back as follows:
 - (i) Residences on site and adjoining: a distance of no less than one thousand five hundred (1,500) feet.
 - (ii) Property lines: a distance of no less than one thousand five hundred (1,500) feet.
 - (iii) Public Roads: a distance of no less than one thousand five hundred (1,500) feet.
 - (iv) State Wetlands: a distance consistent with Federal and New York State Regulations.
- (2) 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 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.

(E) Noise and Setback Easements

- (1) An applicant may, with approval from the Town 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.
- (2) 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 Town 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 benefitted 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.

14.3-8 - Issuance of Wind Energy Facility Permits

- (A) If approved, the Town 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.
- (B) The decision of the Town Board shall be filed within fifteen (15) days in the office of the Town Clerk and a copy mailed to the applicant by first class mail.
- (C) If any approved Wind Energy Facility is not substantially commenced within one year of issuance of the Wind Energy Facility Permit or not completed within two years of the issuance of the Wind Energy Facility Permit, the permit shall expire, unless the Town 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.

14.4 Wind Measurement Towers

14.4-1 Applicability and Purpose. The requirements in this section shall govern the location and site plan review for wind measurement towers, also known as anemometer towers, used to determine the wind speeds and the feasibility of using particular sites. Wind measurement towers shall be permitted in the _____ district upon Site Plan approval and Wind Measurement Tower Permit issued by the Planning Board. Height limitations for buildings and structures shall not apply to wind measurement towers. No tower shall be used, built, moved, reconstructed, changed or altered except after approval of a Wind Measurement Tower Permit and Site Plan in conformity with requirements set forth below.

5.10-4 Site Plan Review – The Planning Board shall review a proposed site plan showing all existing and proposed structures and improvement in accordance with Article 7 governing site plan review. In addition, a proposed Site Plan for a Wind Measurement Tower shall show any new and existing roads and grading plans for new facilities and roads. The Site Plan shall also include a justification for the height of any tower and justification for any land or vegetation clearing. Additionally the Planning Board may require that the

site plan include a completed Visual Environmental Assessment Form. The applicant shall show the visibility of towers and related facilities from key viewpoints within and outside the municipality. The Planning Board may require the applicant to submit a more detailed visual analysis based on the results of the Visual Environmental Assessment Form.

5.10-3. Wind Measurement Tower Permits.

(A) Wind Measurement Tower Permits 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:

- (1) Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.
- (2) Name, address, telephone number and signature of the property owner along with written authorization by the property owner to submit the application.
- (3) Proposed site plan and testing schedule.
- (4) Decommissioning plan, including a security bond for removal.

(B) Application Review.

- (1) Applicants must arrange a pre-application meeting with the Planning Board.
- (2) Ten (10) 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.
- (3) 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 unless an extension between the Planning Board and the Applicant is agreed to. Upon submission of a complete application, the Planning Board shall proceed with its review.
- (4) The Town Planning shall hold at least one public hearing on the application. Notice shall be published in the Town's official newspaper, no less than ten (10) 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 hearing for site plan approval. All adjoining property owners within two thousand (2,000) feet of the outer boundary of a proposed Wind Measurement Tower shall be given notice of a public hearing via certified mail at the expense of the applicant.
- (5) Notice of the project shall also be given, if applicable, to the Schoharie County Planning Commission, as required by General Municipal Law § 239-m.

(C) Permit Issuance.

- (1) The Planning Board should, within 120 days of determining the application is complete, and upon consideration of the standards in this set forth in Section ____ () 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.

- (2) If approved, the Planning Board shall direct the Town Code Enforcement Officer to issue a Wind Measurement Tower Permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code.
- (3) 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.
- (4) If any approved Wind Measurement Tower Permit is not substantially commenced within one year of issuance of the Wind Measurement Tower Permit or not completed within two years of the issuance of the Wind Measurement Tower Permit, the 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.

5.10-4 Performance Standards - The Planning Board in reviewing the Wind Measurement Tower Permit and the Planning Board in conducting the Site Plan review shall observe the following performance standards in its review of tower applications:

(A) The distance between a wind measurement tower and the property line shall be at least 1 ½ times the total height of the tower.

(B) ADDITIONAL STANDARDS?

14.5 Small Wind Turbines

14.5-1 Applicability and Purpose. The requirements in this section shall govern the location and site plan for Small Wind Turbines, defined as 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. Small Wind Turbines shall be permitted as an accessory use in the district upon Site Plan approval and the issuance of a Small Wind Turbine Permit issued by the Planning Board. Height limitations for buildings and structures shall not apply to Small Wind Turbines. No small wind turbine shall be used, built, moved, reconstructed, changed or altered except after receiving Site Plan approval and a Small Wind Turbine Permit in conformity with requirements set forth below.

Section 14.5-2. Site Plan Review.

- (A) The Planning Board is hereby authorized to approve, approve with conditions, or disapprove Site Plans for small wind turbines designed for residential, farm, institutional and business use on the same parcel. The proposed Site Plan for a Small Wind Turbine shall meet the requirements of Article 7 and include a completed Visual Environmental Assessment Form. The applicant shall show the visibility of turbine key viewpoints. The Planning Board may require the applicant to submit a more detailed visual analysis based on the results of the Visual Environmental Assessment Form.
- (B) The Planning Board shall review the proposed site plan in accordance with Article 7 governing site plan review, provided however, 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 10 days before any hearing, but, where any hearing is adjourned by the Planning Board to hear additional comments, no further publication shall be required. 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.

14.5-3. Small Wind Turbine Permit.

14.5-4 Permit Requirement. A Small Wind Turbine requires a Small Wind Turbine Permit issued by the Planning Board. An application for a Small Wind Turbine Permit shall include:

- (1) Name, address, telephone number and signatures of the applicant and agent for the applicant, if any.
- (2) Proposed site plan and testing schedule.

14.5-5 Application Review.

- (1) Applicants must arrange a pre-application meeting with the Town Board.
- (2) Ten (10) 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.
- (3) The Town 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 unless an extension between the Town Board and the Applicant is agreed to. Upon submission of a complete application, the Town Board shall proceed with its review.
- (4) The Town Board shall hold at least one public hearing on the application. Notice shall be published in the Town's official newspaper, no less than ten (10) days before any hearing, but, where any hearing is adjourned by the Town Board to hear additional comments, no further publication shall be required. The public hearing may be combined with public hearing for site plan approval. 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.
- (5) Notice of the project shall also be given, if applicable, to the Schoharie County Planning Commission, as required by General Municipal Law § 239-m.

14.5-6 Permit Issuance.

- (5) The Planning Board should, within 120 days of determining the application is complete, and upon consideration of the Development Standards for Wind Energy Facilities set forth in Section () 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.
- (6) If approved, the Planning Board shall direct the Town Code Enforcement Officer to issue a Small Wind Turbine Permit upon satisfaction of all conditions for said Permit, and upon compliance with the New York State Building Code.
- (7) 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.
- (8) If any approved Small Wind Turbine Permit is not substantially commenced within one year of issuance of the Small Wind Turbine Permit or not completed within two years of the issuance of the Small Wind Turbine Permit, the 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.

5.9-4 Performance Standards - The Town Board Planning Board in conducting the Site Plan review shall observe the following performance standards in its review of site plans for Small Wind Turbines:

- (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 purpose 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 for good cause shown by the applicant.
- (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 located 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 locate 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.

14.6 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.

15.7 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 section.

15.8 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 Town 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.

14.2-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 Town Board. 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 Town Board, to cure any deficiency. An extension of the 90 day period may be considered by the Town 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 a 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 Town Board. The applicant shall have 90 days after written notice from the Town 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 Town Board shall the right to use the security posted as part of the decommission plan to remove the wind turbine.

ARTICLE 1513 DEFINITIONS

When used in this Local Law, the following terms shall have meanings set out below. Any term used in this Local Law which is not defined in this Local Law shall carry its customary meaning as defined in a generally accepted dictionary.

ACCESSORY APARTMENT: A dwelling unit occupying the lesser of one thousand (1,000) square feet or thirty percent (30%) of the floor space of an owner occupied structure containing a principal use that is single-family residential or nonresidential, or a dwelling unit no larger than one thousand (1,000) square feet located in an accessory structure on an owner-occupied property.

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.

ACCESSORY STRUCTURE: A structure subordinate to a principal building on the same lot and used for purposes customarily incidental to those of the principal building or use.

ACCESSORY USE: A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.

AGRICULTURAL DATA STATEMENT: An identification of farm operations within an agricultural district located within five hundred (500) feet of the boundary of property upon which a subdivision is proposed, as provided in Section 305-a of the Agriculture and Markets Law of the State of New York. An "Agricultural Data Statement" shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred (500) feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the Agricultural Data Statement.

AGRICULTURE: The use of land and structures for the production, preservation, nonindustrial processing, storage and sale of agricultural commodities such as crops, plants, flowers, vines, trees, sod, shrubs, livestock, honey, Christmas trees, compost, poultry or dairy products, but not including agricultural industry or farms primarily for the disposal of waste products or garbage.

AGRICULTURALE DISTRICT: A district created under Section 303~~5~~ of the Agriculture and Markets Law with the intent to provide for the protection and enhancement of agricultural land as a viable segment of the local economy and environmental resource of major importance.

AGRICULTURAL STRUCTURE: A barn, silo, storage building, roadside stand, equipment shed, or other accessory structure customarily used for agricultural purposes.

ALTERATION: In regards to a structure, a change to or rearrangement of the structural parts or exterior appearance, or any expansion thereof, whether by extension of any side or by any increase in height, or the moving of such structure from one location to another.

ALTERNATIVE ENERGY SYSTEMS: Structures, equipment, devices or construction techniques used for the production of heat, light, cooling, electricity or other forms of energy on site and may be attached to or separate from the principal structure.

ALTERNATIVE TOWER STRUCTURE: Manmade trees, silos, clock towers, bell steeples, light poles, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers.

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.

ANTENNA: Any exterior apparatus designed for telephonic, radio, or television communication through the sending and/or receiving of electromagnetic waves.

APARTMENT HOUSE/MULTI-FAMILY DWELLING: A principal structure which is devoted to rental living units for three (3) or more families or individuals living independently of each other.

BAR, TAVERN, NIGHTCLUB: An establishment used primarily for the service of liquor by the drink to the general public and where food or packaged liquors may be served or sold only as accessories to the primary use.

BED-AND-BREAKFAST DWELLING: Owner-occupied, one-family dwelling used for providing overnight accommodations and a morning meal to not more than ten (10) transient lodgers, containing at least three but not more than five bedrooms for such lodgers.

BILLBOARD: A free standing sign larger than three hundred (300) square feet in gross area.

BOARDING HOUSE: An owner-occupied dwelling in which at least three (3) but not more than six (6) rooms are offered for rent, with or without the provision of meals.

BUFFER: Vegetation, fencing, or earthen berms placed in such a manner that they make structures, objects, or

parking lots not visible from a public road or adjacent properties throughout the year. Objects or structures may be "screened" by topography, vegetation or fencing as outlined in this law.

BUILDABLE LAND: That portion of a lot which is suitable for building structures and locating septic disposal facilities, for example, all land excluding wetlands and watercourses, slopes exceeding thirty percent (30%) and the one-hundred-year flood zone as mapped on the Federal Emergency Management Agency's Flood Insurance Rate Map.

BUILDING: A structure which is permanently affixed to the land, has one or more floors and a roof and is intended for the shelter, housing or enclosure of persons, animals or chattel.

BUILDING HEIGHT: The vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof, excluding any appurtenances. When a lot fronts on two (2) or more streets of different levels, the lower street level shall be taken as the base for measuring the height of the building.

BUILDING-INTEGRATED PHOTOVOLTAIC (BIPV) SYSTEMS: A solar energy system that consists of integrating photovoltaic modules into the building structure, such as the roof or the façade and which does not alter the relief of the roof.

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

CAMPGROUND: Any area used for transient occupancy by camping in tents, camping trailers, travel trailers, motor homes or similar facility designed for temporary shelter, without structural additions to or removal of wheels from vehicles admitted, for a period exceeding fourteen (14) days or where a fee is paid for such use. Any area that places or stores three (3) or more such facilities shall be considered a campground and shall be subject to those zoning regulations as a campground. A recreational vehicle campground may have hook-ups for water and sewer and other amenities for campground guests including, but not limited to swimming pool, tennis courts and shower facilities.

CEMETERY: Property used for interring the dead. A cemetery includes a mausoleum, or similar structure, but does not include a crematory.

CHANGE OF USE: When there is a change of use from one use category to another use category described in the table of uses of this law; when a use has exceeded the scope of its original permit; or when a use requires a new permit from any governmental agency. A change of ownership or tenancy shall not be considered a change of use. When a change of use occurs, a new site plan review is required and should concentrate on ensuring that signage, lighting, and where appropriate landscaping and sidewalk standards are met.

CLEAR-CUTTING: *The practice of cutting timber where the portion remaining standing is 10% or less of the original basal area of timber on the area cleared.*

CLUSTER SUBDIVISIONS: Development of one-family dwellings on lots which are smaller than would customarily be permitted by this Law.

COLLECTIVE SOLAR: Solar installations owned collectively through subdivision homeowner associations, college student groups, "adopt-a-solar-panel" programs, or other similar arrangements.

COMMERCIAL USE: Any use including, but not limited to retail sales, office, service (for example insurance sales, beauty parlors), professional (for example, medical and dental offices), restaurants, wholesale operations, warehousing, manufacturing, or multi-family dwelling units.

COMMUNICATION TOWER: A structure used for transmitting and receiving radio, microwave or similar electromagnetic signals, not including antennas and satellite dishes designed for ordinary home or farm use.

COMMUNITY CENTER: Includes public or private meeting halls, or places of assembly not operated primarily for profit.

COMPREHENSIVE PLAN: The Comprehensive Plan adopted by the Town and Village -Board of Schoharie for the future preservation and development of the Town and Village of Schoharie including any part of such plan separately adopted and any amendment to such plan.

CONCENTRATED ANIMAL FEEDING OPERATION (CAFO): See definition for Intensive Agricultural Operation.

CONSTRUCTION TRAILER: A mobile unit used for nonresidential purposes associated with on-site construction.

DAY: shall be one (1) period of twenty four (24) consecutive hours.

DAY CARE: A private establishment enrolling four (4) or more children and where tuition, fees or other forms of compensation for the care of children is received, and which is licensed or approved to be used as a child care center.

DENSITY: The concentration of dwelling units in any given area and described as the number of dwelling units per acre of land. It is the number of dwelling units in relation to the total land area proposed to be used for residential purposes.

DESIGN STANDARDS: A set of requirements and/or criteria to be met by a developer to meet various community goals as stated in the Town and Village of Schoharie Comprehensive Plan. Design Standards include, but are not limited to, requirements for building design, height, parking, landscaping, lighting, signage, and driveways.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including but not limited to construction or alteration of buildings or other structures, as well as mining, dredging, filling, paving, excavations or drilling operations.

DRIVEWAY: A private way providing vehicular access from a public or private road to a residence or to a commercial or noncommercial establishment.

DWELLING: A building designed or used exclusively as living quarters for one (1) or more families.

DWELLING, MULTIFAMILY: A dwelling containing separate living units for three (3) or more families.

DWELLING, SINGLE-FAMILY: A detached building designed for the use of one (1) household, including one (1) or more persons living as a family.

DWELLING, TWO-FAMILY: A detached building containing two (2) dwelling units.

DWELLING UNIT: A building or portion thereof providing complete housekeeping facilities for one (1) family.

EXPEDITED REVIEW: The grant of a priority status to an application that results in the review of the application ahead of applications filed prior thereto, including applications which may be currently under review by the applicable agency.

FAMILY: One (1) person, or a group of two (2) or more persons living and cooking together in the same dwelling unit as a single housekeeping entity. A roomer, boarder, lodger or occupant of supervised group quarters shall not be considered a member of a "family."

FARM OPERATION: Land used in agricultural production, farm buildings, equipment and farm residential buildings.

FARM STAND: Any retail operation concentrating on sales of agricultural products.

FLEA MARKET: An occasional or periodically-held market in an open area or structure where spaces are rented or provided to groups or individual sellers who offer goods for sale to the public. This does not include individual garage or tag sales.

FLOOR SPACE: The sum of the areas of habitable or commercially usable space on all floors of a structure, including the interior floor area of all rooms (including bathrooms and kitchens), closets, pantries, hallways that are part of a dwelling unit or inside a commercial building, excluding cellars or unfinished basements.

FLUSH-MOUNTED SOLAR PANEL: Photovoltaic panels and tiles that are installed flush to the surface of a roof and which cannot be angled or raised.

FORESTRY USE & STRUCTURE: The harvesting of forest products such as lumber, pulp wood, firewood, maple syrup, or Christmas trees. Structure includes any building, site or place used for the cutting, milling, and/or splitting of raw timber into wood products for the purpose of sale.

FREE STANDING SIGN: A self-supported sign not attached to any building wall or fence, but in a fixed location. This does not include portable signs.

FREESTANDING OR GROUND-MOUNTED SOLAR ENERGY SYSTEM: A solar energy system that is directly installed in the ground and is not attached or affixed to an existing structure.

FRONT: The side of a building or structure parallel to and closest to a road or street. On a corner lot, both sides of a building facing the street shall be considered the "front."

GARAGE (PRIVATE): A building for the storage of vehicles owned by the property owner.

GLARE: Spillover of artificial light beyond the area intended for illumination in a manner which either impairs vision or beams light onto adjoining properties or toward the sky.

GRADING: Any excavation, or alteration of land contours.

GROUND WATER: Any water beneath the land surface that is under atmospheric or artesian pressure and that enters wells and springs serving as sources of water supply.

HAZARDOUS MATERIAL: Any substance listed in or exhibiting characteristics identified in the Official Compilation of Codes, Rules and Regulations of the State of New York This includes material that is a present or potential hazard to human health or the environment when improperly stored, transported, discarded or managed, including hydrocarbon products such as gasoline, oil and diesel fuel.

HEIGHT: The vertical distance measured from the average finished grade along the walls of the building to the highest point of the roof for flat roofs, and to the mean height between the eaves and the ridge for gable, hip and gambrel roofs. When referring to a tower or other structure, the distance measured from ground level to the highest point on the tower or other structure, even if the highest point is on an antenna.

HOME-BASED BUSINESS: An occupation or business activity resulting in a product or service for financial gain, conducted wholly or partly in a dwelling unit or accessory structure, and which is clearly secondary to the use of the dwelling unit for living purposes. "Home-based Business" includes, but is not limited to, the following: day care, art studio, dressmaker, barbershops, beauty parlors, carpenter, electrician, plumber, professional office of a physician, dentist, lawyer, engineer, architect or accountant. "Home-based Business" does not include kennels, motor vehicle services or restaurants. Home-Based Business may require a Special Use Permit where the use results in parking for more than three (3) cars at any one time or the employment of more than one (1) individual not living in the residential structure.

HOSPITAL: An institution providing primary health services and medical or surgical care to persons, primarily inpatients, suffering from illness, injury, disease, deformity or other abnormal physical or mental conditions, and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities or training facilities.

HOTEL: (See Lodging Facility)

INDOOR, OTHER: A building and related facilities designed and equipped for the provision of entertainment activities such as concerts, plays and other live entertainment or the showing of movies and other non-live entertainment.

INDOOR RECREATION: A building designed and equipped for the conduct of sports, exercise, leisure time activities and other customary and usual recreational uses.

“INJECTION WELL: A bored, drilled or driven shaft whose depth is greater than the largest surface dimension, or a dug hole whose depth is greater than the largest surface dimension, through which fluids (which may or may not include semi-solids) are injected into the subsurface and less than ninety (90) percent of such fluids return to the surface within a period of ninety (90) days.”

IMPERMEABLE SURFACE: Any material covering the ground through which water does not readily penetrate, including but not limited to roofed structures and concrete, oil and stone, tar or asphalt pavement.

INTENSIVE AGRICULTURAL OPERATION: An animal feeding operation that has more than one thousand (1,000) animal units or between three hundred and one (301) and one thousand (1,000) animal units and that may or does discharge to a surface water of the United States; or has been designated a CAFO by the United States Environmental Protection Agency (USEPA) on a case-by-case basis after inspection by USEPA.

INTERNAL AND EXTERNAL ILLUMINATED SIGNS: Any sign lighted by electrical bulbs, fluorescent lights, or neon tubes. Neon tubes used as abstract, graphic, decorative or architectural elements shall be considered to be an illuminated sign. Internally illuminated signs are those that are lighted from within the structure itself. Externally illuminated signs are those that have artificial lights projecting upon the face of the sign.

JUNK CAR: Any motor vehicle, whether it be an automobile, bus, van or truck originally intended for travel on the public highways, which is abandoned, stored, left or placed by its owner or any other person on public or private premises, which vehicle is neither intended nor in any condition for legal use upon the public highway and is not currently registered by the State of New York or any other State for operation on public highways; or is being held or used for the purposes of resale of the vehicle or used parts therefrom; or is in such condition as to cost more to repair and place in operating condition than its reasonable market value prior to such repair. The foregoing definition shall not include an antique vehicle stored for restoration or display or both as part of a hobby.

JUNKYARD: shall mean 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 the collecting, dismantling, storage and deposit, whether in connection with another business or not, where two (2) or more unlicensed, old or secondhand motor vehicles, no longer intended or in condition for legal use on the public highways and not currently registered by the State of New York or any other State for operation on public highways, or are in such condition as to cost more to repair and place in operating condition than its reasonable market value prior to such repair; and are being held, whether for the purposes of resale of the vehicle or 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.

KARST REGION: That portion of the Town of Schoharie underlain with cavernous limestone rock.

KENNEL, STABLE, ANIMAL HOSPITAL, VETERINARIAN OFFICE:

Kennel - A place where more than three (3) dogs more than six (6) months old are housed for sale, boarding, care or breeding, for which a fee is charged. Stable - A use of property on which a horse or horses are quartered for fee or other remuneration.

Animal Hospital / Veterinarian Office - A place where animals are given medical or surgical treatment and the boarding of animals is limited to short-term care incidental to the hospital use.

LIGHT TRESPASS: The shining of light produced by a light fixture beyond the boundaries of the property on which it is located.

LOADING DOCK: An off-street space or berth with a raised platform used for loading or unloading cargo, products, or materials from vehicles.

LOADING ZONE: An area of at least four hundred twenty (420) square feet used for loading or unloading cargo, products or materials.

LODGING FACILITY: Any hotel, motel, inn or other establishment other than a bed-and-breakfast and boardinghouse, providing sleeping accommodations for transient guests, with or without a dining room or restaurant.

LOT: A parcel of land occupied or capable of being occupied by one or more buildings and the accessory uses or buildings customarily incident to it, including such open spaces as are required by this Local Law.

LOT AREA: Any area of land, the size of which is determined by the limits of the lot lines bounding said area and is usually expressed in terms of square feet or acres.

LOT, CORNER: A lot at the junction of and abutting on two (2) or more intersecting roads.

LOT COVERAGE: The total area or percentage of lot area covered by buildings, structures and impermeable surfaces.

LOT DEPTH: A mean distance between the front and rear lot lines, measured in the general direction of the side lot lines.

LOT FRONTAGE (aka ROAD FRONTAGE): A lot line measured at the street line.

LOT LINES: The property lines that bound a lot as defined herein.

LOT OF RECORD: Any lot which has been established as such by plat, survey record or deed prior to the date of this law and duly filed in the office of the Schoharie County Clerk. Any lot created subsequent to the establishment of the Town of Schoharie subdivision regulations must have been approved by the Town of Schoharie Planning Board in order to be considered a lot of record.

LOT WIDTH: A mean distance between side lot lines measured in the general direction of the front and rear lot lines.

LUMEN: A measure of light output, as rated by the manufacturer of the fixture when installed, and maintained according to its intended design.

LUMINAIRE: A complete lighting system including a lamp or lamps and a fixture.

MANUFACTURED HOME: These are structures built in the factory and transported to the site. Manufactured homes include panelized homes (flat units consisting of panels of walls with windows, doors, wiring and outside siding), modular homes (multi-section units to be placed on a permanent foundation and are not transportable after installation), and pre-cut homes (factory cut to design specifications and include kit, log and dome homes). All manufactured homes are transported to the site and assembled. They differ from mobile homes in that they are not transportable after installation and do not have a permanent axle.

MANUFACTURING: The processing, assembly or fabrication of goods and products on a large-scale.

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

MINING / RESOURCE EXTRACTION: The extraction of overburden and minerals from the earth; the preparation and processing of minerals, including any activities or processes or parts thereof for the extraction or removal of minerals from their original location and the preparation, washing, cleaning, crushing, stockpiling or other processing of minerals at the mine location so as to make them suitable for commercial, industrial, or construction use; exclusive of manufacturing processes, at the mine location; the removal of such materials through sale or exchange, or for commercial, industrial or municipal use; and the disposition of overburden, tailings and waste at the mine location. "Mining" shall not include the excavation, removal and disposition of minerals from construction projects, exclusive of the creation of water bodies, or excavations in aid of agricultural activities.

MIXED USE: A use of property, conducted on a single lot, which includes two or more separate uses. Home occupations and vertically integrated businesses or uses are not to be considered mixed uses. For purposes of this definition the term "vertically integrated businesses or uses" means a business or use which entails a network of production and distribution of services or goods which is under common ownership or control such as the manufacturing from raw materials for sale to the consumer.

MOBILE HOME: A transportable, single family dwelling intended for permanent occupancy contained in one or more units designed to be joined into one integral unit capable of again being separated for towing with a permanent chassis and axle, and constructed so that it may be used with or without a permanent foundation and manufactured and stamped with a DHCR stamp. Each mobile home shall be considered to be one dwelling unit for purposes of density calculations.

MOBILE HOME PARK: Any parcel which is improved for the placement of two (2) or more mobile homes occupied or intended to be occupied for dwelling purposes.

MOTOR VEHICLE SERVICE STATION: An area, building or portion of a building that is or designed to be used for the repair and servicing of motor vehicles, including but not limited to mechanical repairs, vehicle body painting and repairs, oil changes, inspections and/or the selling of gasoline.

MOTEL: (SEE LODGING FACILITY)

MULTIFAMILY DWELLING: (SEE DWELLING, MULTIFAMILY)

MULTIPLE USE: Any combination of residential, commercial or industrial uses on the same lot or in the same building.

"NATURAL GAS: Methane and any gaseous substance, either combustible or non-combustible, which is produced in a natural state from the earth and which maintains a gaseous or rarefied state at a standard temperature and pressure conditions, and/or gaseous components or vapors occurring in or derived from petroleum or other hydrocarbons."

NATURAL GAS AND/OR PETROLEUM EXTRACTION ACTIVITIES: The digging or drilling of a well for the purposes of exploring for, developing or producing natural gas, petroleum or other subsurface hydrocarbons, including without limitation any and all forms of shale fracturing."

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES: Any of the following in any form, and whether or not such items have been excepted or exempted from the coverage of any federal or state environmental protection laws, or have been excepted from statutory or regulatory definitions of "industrial waste", "hazardous," or "toxic," and whether or not such substances are generally characterized as waste: (a) Below-regulatory concern radioactive material, or any radioactive material which is not below-regulatory concern, but which is in fact not being regulated by the regulatory agency otherwise having jurisdiction over such material in the Town, whether naturally occurring or otherwise, in any case relating to, arising in connection with, or produced by or incidental to the exploration for, the extraction or production of, or the processing, treatment, or transportation of, natural gas, petroleum, or any related hydrocarbons; (b) natural gas or petroleum drilling fluids; (c)

natural gas or petroleum exploration, drilling, production or processing wastes; (d) natural gas or petroleum drilling treatment wastes (such as oils, frac fluids, produced water, brine, flowback, sediment and/or any other liquid or semi-liquid material); (e) any chemical, waste oil, waste emulsified oil, mud, or sediment that was used or produced in the drilling, development, transportation, processing or refining of natural gas or petroleum; (f) soil contaminated in the drilling, transportation, processing or refining of natural gas or petroleum; (g) drill cuttings from natural gas or petroleum wells; or (h) any other wastes associated with the exploration, drilling, production or treatment of natural gas or petroleum. This definition specifically intends to include some wastes that may otherwise be classified as "solid wastes which are not hazardous wastes" under 40 C.F.R. § 261.4(b). The definition of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes does not include (i) recognizable and non-recognizable food wastes, or (ii) waste generated by agricultural use.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DISPOSAL/STORAGE FACILITY: Any of the following: (a) tanks of any construction (metal, fiberglass, concrete, etc.); (b) impoundments; (c) pits; (d) evaporation ponds; or (e) other facilities, in any case used for the storage or treatment of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes that: (i) are being held for initial use, (ii) have been used and are being held for subsequent reuse or recycling (iii) are being held for treatment, or (iv) are being held for storage.

NATURAL GAS AND/OR PETROLEUM EXPLORATION, EXTRACTION OR PRODUCTION WASTES DUMP: Land upon which Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes, or their residue or constituents before or after treatment, are deposited, disposed, discharged, injected, placed, buried or discarded, without any intention of further use.

NATURAL GAS COMPRESSION FACILITY: Those facilities or combination of facilities that move natural gas or petroleum from production fields or natural gas processing facilities in pipelines or into storage; the term shall include equipment for liquids separation, natural gas dehydration, and tanks for the storage of waste liquids and hydrocarbon liquids.

NATURAL GAS PROCESSING FACILITY: Those facilities that separate and recover natural gas liquids (NGLs) and/or other non-methane gasses and liquids from a stream of produced natural gas, using equipment for any of the following: cleaning or stripping gas, cooking and dehydration; residual refinement, treatment or removing oil or condensate, removing water, separating NGLs, removing sulfur or carbon dioxide, fractionation of NGLs, or the capture of CO₂ separated from natural gas streams."

NET-METERING: A billing arrangement that allows solar customers to get credit for excess electricity that they generate and deliver back to the grid so that they only pay for their net electricity usage at the end of the month.

NONCONFORMING LOT: A lot of record that does not comply with the area, frontage, shape or locational provisions of this Law for the land use area in which it is located but was not in violation of the applicable requirements when it was lawfully created.

NONCONFORMING STRUCTURE: A structure that does not satisfy the dimensional requirements of this Law for the area in which it is located, but which was not in violation of applicable requirements when constructed and lawfully erected pursuant to applicable permits and approvals.

NONCONFORMING USE: Any use lawfully existing prior to and at the time of the adoption or amendment of this Law or any preceding zoning law or ordinance, which use is not permitted by or does not conform to the permitted use provisions for the area in which it is located. A preexisting lawful use which is allowed only by Special Use Permit under this Law shall be considered a "nonconforming use" until such time as a Special Use Permit is granted for it.

NUISANCE: A use of property that produces a tangible and appreciable injury to neighboring property and as further defined in the common law of the State of New York.

NURSERY / GARDEN SHOP: commercial facility which primarily includes the sale of trees, shrubs, plants and utensils incidental to gardening. This shall not be interpreted to include large-product retail sales of farm equipment and implements.

NURSING / CONVALESCENT HOME: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

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 non-discriminatory wholesale market for electricity in New York State.

OFFICE: The building or room(s) and related spaces used for a for-profit or non-profit business or organization to conduct their business or operation.

OFF-PREMISE SIGN: Any sign which is not on the premises of the business, including a billboard.

OPEN SPACE: An area of land not developed with structures and used for recreation, agriculture, lawn or forestry or left in its natural state.

OUTDOOR LIGHT FIXTURE: Outdoor electrically powered illuminating devices, outdoor lighting or reflective surfaces, lamps and similar devices, permanently installed or portable, used for illumination or advertisement. Such devices shall include, but are not limited to search, spot and flood lights for buildings and structures, recreational areas, parking lots, landscape lighting, billboards and signs, street lighting, product display lighting, building overhangs and open canopies.

OUTDOOR OTHER: Any use which is designed to attract persons to engage in, or watch, activities on a commercial or fee basis or for the purposes of sales. Includes tourist attractions, concerts, festivals, flea markets, auctions, amusement parks, etc.

OUTDOOR SPORTS: Includes golf driving range, pitch and putt course and par three (3) golf course; recreation court or field; ski area; playfield; swimming pool; bike trails; hiking trails; motor sports and similar facilities for outdoor recreation on a commercial or fee basis.

OUTDOOR STORAGE: Land used for the keeping of goods, wares, equipment or supplies outside of a structure.

OVERLAY DISTRICT: A zone or district created for the purpose of conserving natural or cultural resources or promoting certain types of development. Overlay Land Use Areas are imposed over existing land use areas and contain provisions that are applicable in addition to those contained in the land use law.

PARKING SPACE: The net area needed for parking one (1) automobile, equal to one hundred and eighty (180) square feet with dimensions of nine by twenty (9x20) feet. Such area is to be either paved or of other hard surface which shall be located outside of any public right-of-way.

PERMIT GRANTING AUTHORITY: The [Town/City/Village] authority charged with granting permits for the operation of solar energy systems.

PERMITTED USE: A use that is allowed without land use or special use permit required. However, a Building Permit may be required.

PERSONAL SERVICE: A use which provides any service for fee geared to the individual. Includes barber, hair dresser, beauty parlor, shoe repair, photographic studio, tailor, cleaners and businesses providing similar services.

PHOTOVOLTAIC (PV) SYSTEMS: A solar energy system that produces electricity by the use of semiconductor devices, called photovoltaic cells that generate electricity whenever light strikes them.

PLANNED DEVELOPMENT DISTRICT (PDD): A plot of land which is developed as a unit with a grouping of residential, commercial or industrial buildings, together with accessory buildings and all appurtenant roadways, parking areas, loading spaces and service buildings and facilities. Such tract shall be at least three (3) acres in area. A Planned Development District shall involve a detailed Site Plan review and an amendment to this Zoning Law shall be required.

PLOT PLAN: A map or plan showing the boundaries of a parcel and all structures and important physical features on it, drawn to scale with accurate dimensions and submitted with an application for a minor project, Special Use Permit or a Variance.

POLITICAL SIGN: A sign designed to influence the action of voters for the passage or defeat of a measure or the election of a candidate to a public office.

PORTABLE SIGN: A sign capable of being readily moved or relocated, including portable signs mounted on a chassis and wheels, or supported by legs.

POTABLE WATER SUPPLY: Water supply suitable for human consumption.

PREMISES: A lot, together with all the structures and uses thereon.

PRINCIPAL BUILDING: (SEE BUILDING, PRINCIPAL)

PRIME SOILS: Soils defined by the United States Natural Resources Conservation Service and New York State as being particularly suited and best used for agricultural purposes.

PRIVATE ROAD: A non-public road not improved or maintained by any municipal agency.

PROJECTING SIGN: A sign which is affixed to a building, tree, or other structure and which extends more than six (6) inches beyond the surface to which it is affixed.

PUBLIC AND SEMI-PUBLIC FACILITIES: Any one (1) or more of the following uses, including grounds and accessory buildings necessary for their use: Religious Institution; public parks, playgrounds and recreational areas when authorized or operated by a governmental authority; schools; public libraries; group homes; and not-for-profit fire stations, ambulance stations, public safety buildings and detention facilities.

PUBLIC UTILITIES / FACILITIES: An installation or facility used, owned, operated and /or maintained by a public utility or municipal governmental agency to supply electric, gas, water, cable television, telephone or other utility service. Included are such facilities as electric unit substations, high-voltage transmission lines, pump stations, water towers and telephone substations. Utility distribution facilities serving customers directly are considered customary accessory uses, not "utility facilities."

QUALIFIED SOLAR INSTALLER: A person who has skills and knowledge related to the construction and operation of solar electrical equipment and installations and has received safety training on the hazards involved. Persons who are on the list of eligible photovoltaic installers maintained by the New York State Energy Research and Development Authority (NYSERDA), or who are certified as a solar installer by the North American Board of Certified Energy Practitioners (NABCEP), shall be deemed to be qualified solar installers for the purposes of this definition. Persons who are not on NYSEDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the [Town/City/Village] determines such persons have had adequate training to determine the degree and extent of the hazard and the personal protective equipment and job planning necessary to perform the installation safely. Such training shall include the proper use of special precautionary techniques and personal protective equipment, as well as the skills and techniques necessary to distinguish exposed energized parts from other parts of electrical equipment and to determine the nominal voltage of exposed live parts.

RECREATIONAL BUSINESS: A business which, for compensation, offers recreational services including but not limited to marinas, boatyards, ski resorts, public stables, golf courses and driving ranges, miniature golf, movie theaters and other places of public or private entertainment.

RELIGIOUS INSTITUTION: A church, temple, parish house, convent, seminary or retreat house or other place of religious worship, as well as a monastery or other place of religious retreat.

RESEARCH AND DEVELOPMENT / TECH (R&D): Research and Development / Tech shall mean a commercial use in which research and experiments leading to the development of new products or intellectual property are conducted. This use may be conducted within the confines of an institutional, clinical, or commercial enterprise. Activities typically include: research, design, analysis and development, and/or testing of a product. Uses typically include testing laboratories, acoustical chambers, wind tunnels, and computer services. Such uses do not promote odors, noise, vibration or particulate that would adversely affect uses in the same structure or on the same site.

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.

RESIDENTIAL USE: A use of land and structures in which people live and sleep overnight on a regular basis.

RESTAURANT: Any establishment, however designated, at which food is sold for consumption to patrons seated within an enclosed building or on the premises. However, a snack bar, or refreshment stand at a public or semi-public community pool, playground or park operated by the agency or group or an approved vendor operating the recreational facilities and for the convenience of the patrons of the facility shall not be deemed to be a restaurant.

RETAIL: A commercial activity and/or a facility characterized by the direct on-premise sale of goods and services to the ultimate consumer, including on-premise manufacturing, processing, servicing and preparation customarily associated therewith and generally involving stock in trade such as are normally associated with department stores, food markets, specialty stores and similar establishments.

RETAIL LARGE PRODUCT: A establishment selling and/or servicing large product consumer goods to the general public including but not limited to new and used motor vehicles, recreational vehicles, mobil homes, construction and farm equipment.

RETAIL SMALL PRODUCT: An establishment selling goods to the general public for personal and household consumption, including but not limited to an appliance store, furniture store, bakery, delicatessen, drug store, florist, grocer, hardware store, liquor store, newsstand, restaurant, shoe store, stationery store and variety store.

ROAD / STREET: An existing public way which affords a principal means of access to abutting properties and is suitably improved and maintained by any municipal agency or a proposed way shown on a plat approved by all appropriate official agencies.

ROAD FRONTAGE: The distance along a street line measured at the front of a lot.

ROADSIDE STAND: A stall or booth for the temporary sale of farm or garden products.

ROOFTOP OR BUILDING MOUNTED SOLAR SYSTEM: A solar power system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

SANDWICH BOARD SIGN: A moveable, two sided sign made only of wood and standing on legs not over four (4) feet in total height and designed to be placed on a sidewalk or driveway.

SCHOOL, COMMERCIAL: Instruction of four (4) or more individuals at one time for a fee on a regular basis.

SCHOOL, NON-COMMERCIAL: Includes parochial, private, public and nursery schools, college, university and accessory uses; and shall exclude commercially operated schools of beauty culture, business, dancing, driving, music and similar establishments.

SEQRA: The acronym for the State Environmental Quality Review Act.

SERVICE BUSINESS: A business or nonprofit organization that provides services to the public, either on or off the premises, including but not limited to building, electrical, plumbing and landscape contracting, arts instruction or studio, banking, auto repair, business and educational services, catering, health club, house cleaning services, locksmith, photocopying, repair and restoration services, tailoring, typing and word processing. "Service business" does not include retail business, restaurants, warehouses or other uses separately listed in the Use Tables of this Law.

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

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 reception either directly or indirectly (as in a reflection off a light colored wall).

SHIELDED LIGHT FIXTURE: a light fixture with cutoff optics that allows no direct light emissions above a vertical cutoff angle of ninety (90) degrees for street lighting or eighty (80) degrees for all other lighting, through the light fixture's lowest light emitting part. Any structural part of the light fixture providing this cutoff angle must be permanently affixed.

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.

SHOPPING CENTER: A lot occupied by more than one (1) commercial use unit, attached or detached, providing small products, retail and services, large products retail and services or office and business services in excess of ten thousand (10,000) square feet gross leaseable area.

SIGN: Any billboard, signboard, inscription, pennant or other material, structure, exterior painting or device composed of lettered or pictorial material that is intended for outdoor viewing by the general public (including inside a window) and used as an advertisement, announcement or direction.

SIGN AREA: That portion of a sign, not including the supporting structures, that include the lettering, designs, logos, or other graphics on the sign face. Where a sign has two sides, one side shall count to calculate the sign area.

SMALL-SCALE SOLAR: For purposes of this Ordinance, the term "small-scale solar" refers to solar photovoltaic systems that produce up to ten kilowatts (kW) per hour of energy or solar-thermal systems which serve the building to which they are attached, and do not provide energy for any other buildings.

SOLAR ACCESS: Space open to the sun and clear of overhangs or shade including the orientation of streets and lots to the sun so as to permit the use of active and/or passive solar energy systems on individual properties.

SOLAR COLLECTOR: A solar photovoltaic cell, panel, or array, or solar hot air or water collector device, which relies upon solar radiation as an energy source for the generation of electricity or transfer of stored heat.

SOLAR EASEMENT: An easement recorded pursuant to NY Real Property Law § 335-b, the purpose of which is to secure the right to receive sunlight across real property of another for continued access to sunlight necessary to operate a solar collector.

SOLAR ENERGY EQUIPMENT/SYSTEM: Solar collectors, controls, energy storage devices, heat pumps, heat exchangers, and other materials, hardware or equipment necessary to the process by which solar radiation is collected, converted into another form of energy, stored, protected from unnecessary dissipation and distributed. Solar systems include solar thermal, photovoltaic and concentrated solar.

SOLAR FARM OR SOLAR POWER PLANT: Energy generation facility or area of land principally used to convert solar energy to electricity, whether by photovoltaics, concentrating solar thermal devices or various experimental solar technologies, with the primary purpose of wholesale or retail sale of electricity.

SOLAR PANEL: A device for the direct conversion of solar energy into electricity.

SOLAR POWER FAST-TRACK PROGRAM: A program to expedite all applications for commercial and residential solar panel installation to encourage the use of reliable and clean renewable energy.

SOLAR STORAGE BATTERY: A device that stores energy from the sun and makes it available in an electrical form.

SOLAR-THERMAL SYSTEMS: Solar thermal systems directly heat water or other liquid using sunlight. The heated liquid is used for such purposes as space heating and cooling, domestic hot water, and heating pool water.

SOUND PRESSURE LEVEL/NOISE: 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.

STABLE, COMMERCIAL: A building where horses are quartered, with remuneration.

STORY: The section of a building between the surface of the floor and the surface of a floor next above or below, whether or not counted for the purposes of computing floor area ratio.

STREET LINE: A line commonly referred to as a right-of-way line, which separates a public street right-of-way from a private lot.

STRUCTURE: A static construction of building materials affixed to the ground, such as a building, dam, display stand, gasoline pump, installed mobile home or trailer, reviewing stand, shed, sign, stadium, storage bin or wall.

SUBDIVISION: The division of any parcel of land into ~~two three~~(23) or more lots, plots, blocks or sites, with or without streets ~~or highways, for the purpose of offering such lots, plots, blocks or sites for sale to the public.~~ This also includes resubdivision of land ~~for which any approved plat has already been filed in the office of the County Clerk and which are entirely or partially undeveloped. heretofore divided or platted into lots, sites or parcels, provided however, that the sale or exchange of parcels of land between adjacent property owners, where such sale does not create additional lots, shall not be considered a subdivision of land.~~

“SUBSURFACE: Below the surface of the earth, or of a body of water, as the context may require.”

SUBSTANTIALLY COMMENCED: In the context of Site Plan review and Special Use Permits: The owner has lawfully begun construction pursuant to a validly issued building permit and installed foundations and all site plan infrastructure (e.g. roads, parking areas, drainage and septic systems).

TEMPORARY SIGN: A sign intended to be used for a limited period of time.

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.

TOTAL HEIGHT: The height of the lower and the furthest vertical extension of the wind turbine rotor plane.

TOWER: Any structure designed and constructed primarily for receiving or transmitting electronic signals, including self-supporting lattice towers, guy towers, or mono-pole towers. The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers, and alternative tower structures.

TOWN-HOUSE: One of a group of two (2) or more attached dwelling units divided from each other by party walls, each unit having a separate entrance from the outside, and each unit being located on a separate lot.

TRADEMARK ARCHITECTURE: Architecture and architectural features such as building design, scale, rooflines, colors, and windows that are associated, through trademarks, and corporate designs, with specific commercial enterprises.

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

TRUCK TERMINAL: Any location where freight originates, terminates or is handled in the transportation process or where carriers maintain operating facilities, excluding the premises of shippers or receivers of freight.

“UNDERGROUND INJECTION: Subsurface emplacement of Natural Gas And/Or Petroleum Extraction, Exploration or Production Wastes by or into an Injection Well.

UNDERGROUND NATURAL GAS STORAGE: Subsurface storage, including in depleted gas or oil reservoirs and salt caverns, of natural gas that has been transferred from its original location for the primary purpose of load balancing the production of natural gas. Includes compression and dehydration facilities, and pipelines.”

USE: The purpose for which any premises or building may be arranged, designed, intended, maintained or occupied, or any occupation, business, activity or operation conducted or intended to be conducted on or in the premises or building.

USE, ACCESSORY: A use which is customarily incidental to and subordinate to the principal use of a lot or structure, located on the same lot as the principal use or structure.

VARIANCE: Written authority to deviate from any regulations of this Law.

WALL SIGN: Any sign which is painted on, incorporated into, or affixed parallel to the wall of a building, and which extends not more than six inches from the surface of that building.

WAREHOUSE: A structure or structures in which materials, goods or equipment are stored.

WATERCOURSE: Any stream, pond, lake, drainage channel or other area of land that is normally or seasonally filled with water.

WETLAND: Shall mean lands or waters of the State meeting the definition of the Official Compilation of Codes, Rules and Regulations of the State of New York or any wetland meeting the United States Environmental Protection Agency and United States Army Corp. of Engineers definition of wetlands . Wetlands generally include swamps, marshes, bogs and similar areas. In the Town of Schoharie, wetlands mapped by the New York State Department of Environmental Conservation are set forth on official maps available at the Town Clerk's office and from the regional office of the New York State Department of Environmental Conservation.

WIND ENERGY FACILITY – Any 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 1 kW and which is intended primarily to reduce consumption of utility power at that location.

YARD: An open space on the same lot with a structure.

YARD, FRONT: An open space extending across the full width of the lot between the front building line and the street line.

YARD, REAR: An open space extending across the full width of the lot between the rear lot line and the rear of the principal building nearest the rear lot line.

YARD, REQUIRED: That portion of any yard required to satisfy minimum yard setbacks. No part of such yard can be included as part of a yard required for structures on another lot.

YARD, SIDE: An open space on the same lot with a principal building between the principal building and side line of the lot and extending from the front yard to the rear yard.