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 but not within the Village 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 retains the concept of designated zoning districts, and incorporates performance standards that can be applied on environmentally sensitive lands and to specific land uses in designated zones. 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 Planning Board 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 and Site Plan approval by the Planning Board in order to ensure compatibility with surrounding areas and properties;

E. All others uses that are not listed in the Use Table may be approved by the Town Board by issuance of a Special Use Permit in accordance with Article 6 and by the Planning Board by issuance of Site Plan approval; and

F. Those uses that are prohibited in certain zones but nevertheless are still proposed by an applicant 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 after 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 or exterior non-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. Subject to any applicable setbacks, 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, a structure used solely for agricultural or farm related purposes, roads, drainage systems and farm ponds;

G. On a yearly basis, a maximum of two (2) garage, lawn and porch sales, a maximum of three (3) days in duration per event;

H. Agricultural uses;

I. Forestry uses, provided that such uses do not involve clear-cutting, except in documented cases of disease;

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

K. 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. 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, sinkholes 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; and

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

Section 1.6 Effective Date

This Local Law shall be effective immediately upon enactment by the Town Board and upon filing a 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.

Section 1.8 Severability

If any word, phrase, sentence, part, section, subsection, or other portion of this Local Law, or the application thereof to any person or to any circumstance, is adjudged or declared invalid or unenforceable by a court or other tribunal of competent jurisdiction, then, and in such event, such judgment or declaration shall be confined in its interpretation and operation only to the provision of this Local Law that is directly involved in the controversy in which such judgment or declaration is rendered, and such judgment or declaration of invalidity or unenforceability shall not affect or impair the validity or enforceability of the remainder of this Local Law or the application hereof to any other persons or circumstances. If necessary as to such person or circumstances, such invalid or unenforceable provision shall be deemed severed herefrom, and the Town Board hereby declares that it would have enacted this Local Law, or the remainder thereof, even if, as to particular provisions and persons or circumstances, a portion hereof is severed or declared invalid or unenforceable.

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 Planning Board. 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. However, if there is a proposed use that is not listed on the Use Table, it may be approved by the Town Board by issuance of a Special Use Permit in accordance with Article 6 and by the Planning Board by issuance of Site Plan approval.

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 Planning Board 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 permitee 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 a 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 any 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, as provided for under the Municipal Home Rule Law and Criminal Procedure 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 a 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 issue 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 (4) 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. 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. However, if there is a proposed use that is not listed on the Use Table, it may be approved by the Town Board by issuance of a Special Use Permit in accordance with Article 6 and by the Planning Board by issuance of Site Plan approval.

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 areas of 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 complement existing businesses and business opportunities in the Town as well as to promote appropriate economic development. Most uses in this area require Site Plan or Special Use Permit approval in accordance with Schedule A.

3.1-3 Industrial District

This District has been delineated to recognize pre-existing uses that were allowed in the Industrial District area under the prior Zoning Law, as well as other uses appropriate for an Industrial District.

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 Overlay 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 by the Town of Schoharie Local Law #1 of 2004 and any subsequent amendments.

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 appropriate 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 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 11. 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 12 hereof).

Section 3.2 Zoning Map

The boundaries of the Land Use Districts are hereby established on a map entitled "Town Land Use Map" adopted by the Town Board 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

All the uses, buildings and facilities, yards, open space, off-street parking and required landscaping must be contained within the district in which the use is permitted.

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 as provided in Section 4.4.

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:**

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

(b) **Architectural Harmony:** Architectural design shall be a consideration for all non-residential buildings and architectural design in keeping with the small town, rural nature of the Town of Schoharie, will be encouraged.

(c) **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.

(d) **Roof Lines 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 are encouraged.

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

(f) **Screening of Utilities:** Where practical, air conditioning units, HVAC systems, solar panels, 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.

(g) **Drive-up Windows:** Drive up windows 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:**

(a) **Illumination:**

(i) 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.

(ii) 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.

(iii) 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.

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

(v) Externally illuminated signs including building identification signs shall only use shielded light fixtures. No internally illuminated signs are permitted unless they are backlighted 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.

(b) **Light Trespass and Glare:**
All light fixtures shall be designed, installed, and maintained to prevent light trespass, as specified below:

(i) 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.

(ii) 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.

(iii) 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

(iv) 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.

(v) 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.

(c) **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.

(i) Mercury-Vapor greater than forty (40) watts, Quartz Lamps, lasers, and search lights are prohibited light sources.

(ii) Poles and fixtures shall compliment the architectural character of the development and surrounding area.

(d) **Installation:**

(i) Electrical feeds to lighting standards shall be run underground, not overhead.

(ii) 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.

(iii) 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.

(e) **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.

(f) **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.

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

(i) Outdoor light fixtures that have a maximum aggregate output of less than two hundred and sixty (260) lumens.

(ii) Temporary holiday lighting used for forty (40) days or less per year.

(iii) Vehicular lights and all temporary emergency lighting needed for fire protection, police protection, and/or other emergency services.

(iv) 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:**

(a) **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.

(b) **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.

(c) **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. Where a proposed project involves extensive land clearing or the removal of existing trees, 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.

(d) **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.

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

(f) **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. 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:**

(a) **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:

(i) 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.

(ii) The size of the structure(s) and the site.

(iii) The reviewing Board may refer to generally accepted traffic engineering and planning manuals. However, such standards should be used as a guide only.

(b) **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.

(c) **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.

(d) **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.

(e) **Parking Lot Landscaping, Buffering, Screening:**

(i) For parking lots of ten (10) or more cars, landscaping is recommended to the extent practicable. However, interior landscaping may not be required if the Planning Board determines there is adequate perimeter landscaping.

(ii) 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.

(f) **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:

(i) The expected maximum number of trucks using the loading facilities at times of peak usage.

(ii) The type of business, size of structure, and size of trucks to be servicing the structure.

(iii) The need to ensure safety by separating truck traffic and loading operations from pedestrian and automobile circulation.

(iv) 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.

(v) 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:**

(a) 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.

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

4.2-3 Signs

A. **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:

(1) Control the size, location and character of signs so they will not confuse, distract, mislead, or obstruct vision necessary for traffic safety;

(2) 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

(3) To create a more attractive visual environment in order to maintain community character, protect property values, and encourage economic growth.

B. **Standards:** All signs in all land use areas shall conform to the following general requirements:

(1) **General Requirements:**

(a) 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.

(b) 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.

(c) 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.

(d) Neon-type flashing lighted signs are not allowed. Non-flashing, neon signs are allowed only in windows, provided they are inside the building

(e) 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.

(f) Signs parallel to and attached to a building should not be set away from the building more than eight (8) inches.

(g) 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

(h) 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).

(i) 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.

(j) Any sign not in use shall be removed at the time of cessation of business.

(k) Signs must be constructed of durable materials, maintained in good condition, and not allowed to become dilapidated.

(l) All billboards are prohibited as defined in Article 13.

(m) 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

(n) Temporary Signs. All temporary signs, including but not limited to political signs, and banners or signs advertising an event, activity, or products for sale, must be removed within seven (7) days after the event advertised and may be erected or placed not more than thirty (30) days prior to the event advertised.

(o) 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.

(p) 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.

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

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

(s) 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.

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

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

(b) 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				
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.

(3) **Non-Conforming Existing Signs:**

(a) Non-conforming existing signs (signs that are not in conformance with this law) 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 Planning Board for a Special Use Permit to continue such non-conforming sign within one (1) year of the date that this Law is adopted. The Planning Board in reviewing such Special Use Permit application shall strive to make such sign or signs in conformance with this law 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.

(b) 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 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.

(4) **Design Guidelines for Signs:**

(a) Signs affixed to the exterior of a building shall be architecturally compatible the style, composition, materials, colors, and details of the building.

(b) Wood and painted metal are the preferred materials for signs. Flat signs should be framed with raised edges.

(c) Sign colors should be compatible with the colors of the building facade. A or matte finish is recommended, to reduce glare and enhance legibility.

(5) **Sign Approval Administration:**

(a) No sign shall be erected without a Zoning Permit from the Code Enforcement Officer, a Special Use Permit from the Planning Board, 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:

(i) A scale drawing of the sign showing type of sign,

(ii) Dimensions, advertising content, materials, method and style of illumination,

(iii) Method of structural support,

(iv) Letter sizes,

(v) Colors,

(vi) Support structures,

(vii) Location on the land or building in relation to existing buildings, roadways, driveways, sidewalks or paths,

(viii) Utility poles and other signs,

(ix) Date of erection of sign, and

(x) Name of the sign owner and person responsible for maintenance of the sign.

(b) 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

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

(d) 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 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 accessory structure or use, including but not limited to a 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. Notwithstanding the foregoing, 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 six-hundred (600) 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 affects 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.

E. The restrictions on clear cutting do not apply to agricultural operations or uses.

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 industrial 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 12 hereof).

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

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

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 by the reviewing Board 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.

Section 4.7 Regulation of Temporary Storage Units

4.7-1 Location

A. The temporary storage unit shall be placed in the least conspicuous location available to minimize disturbance to any adjoining residential properties.

B. The temporary storage unit shall not be located in any public right-of-way.

C. The temporary storage unit shall not be located in any front yard, unless it is the only practical location

D. The temporary storage unit shall not be located in or impede the use of any shared parking area, loading area, aisle, or driveway.

4.7-2 Number of units

Only two temporary storage units may be placed at any residential property at one time.

4.7-3 Other Conditions

A. 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.

B. 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.

Section 4.8 Small Scale Solar Installations

4.8-1 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 Section 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.

4.8-2 Applicability

A. The requirements of this Section 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 Local Law shall not be required to meet the requirements of this Section except in accordance with 4.8-4 (D), (E) and (F).

C. All solar energy systems shall be designed, erected and installed in accordance with all applicable codes, regulations and standards including those stated in the State Building Code.

D. Solar collectors 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.

4.8-3 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 a 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:

(a) Ensure access to the roof;

(b) Provide pathways to specific areas of the roof;

(c) Provide for smoke ventilation opportunity areas; and

(d) 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 site or building specific factors.

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) 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 glare onto adjacent properties and roadways.

4.8-4 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 the 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.

Section 4.9 Small Wind Turbines

4.9-1 Applicability and Purpose

The requirements in this section shall govern 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 with site plan approval by the Planning Board. No small wind turbine shall be used, built, moved, reconstructed, changed or altered except after receiving Site Plan approval in conformity with requirements set forth below. Notwithstanding the foregoing, Small Wind Turbines 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.

4.9-2 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 the subject parcel shall be given notice of a public hearing via certified mail at the expense of the applicant.

4.9-3 Performance Standards

The Planning Board in conducting the Site Plan review shall observe the following additional 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 protective fence of at least six feet in height that encloses the tower shall be installed to restrict tower access.

H. Anchor points for any guy wires for a system tower shall be located within the property that the system is located on and not on or across any above-ground electric transmission or distribution lines. The point of attachment for the guy wires shall be enclosed by a fence six feet high or sheathed in bright orange or yellow covering from the ground up to a minimum of eight feet.

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

A. **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.

B. **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:** In accordance with the Schoharie County Right to Farm Law, 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 an 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 a Zoning Permit from the Code Enforcement Officer prior to commencement of the use, only when exceeding the thresholds below:

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) full-time equivalent 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 Planning Board pursuant to Article 6. In considering said Special Use Permit application, the Planning Board 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 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 Planning Board 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 Planning Board may grant a Special Use Permit allowing accessory dwelling units to be located on a lot provided that the Planning Board 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 Planning Board 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:** Replacement of existing and placement of new singlewide and doublewide mobile homes shall be allowed in zoning districts identified in Schedule A provided they meet the following standards.

B. **Design Criteria:** Design criteria for replacement of existing or installation of new mobile homes, where allowed in Schedule A, shall be required as follows:

(1) All mobile homes shall be installed subject to manufacturer's specifications and may 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 are recommended to 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 comply with federal requirements and the New York State Uniform Fire Prevention and Building Code.

(4) Mobile homes shall have a minimum size of seven hundred and twenty (720) square feet and a minimum width of fourteen (14) feet.

(5) No evidence of a mobile home's trailer hitch or wheels shall be visible once it has been installed.

(6) 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.

C. **Expansion and Replacement of Existing Mobile Home Parks:** 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 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.

D. **New Mobile Home Parks:** New Mobile Home Parks within the Town of Schoharie shall be allowed in accordance with Schedule A 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 with 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 alongside and rear property lines and public roads.

(6) Interior roads must be built to accommodate emergency vehicles. 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.

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

(i) Whether satisfactory ingress and egress exists and the effect of increased traffic on area roads and highways.

(ii) The design and adequacy of community streets, parking areas, driveways, and lighting.

(iii) Landscaping, open spaces and recreation.

(iv) 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:

(a) "This mobile home is designed to comply with the Federal mobile home construction and safety standards in force at the time of manufacture."

(b) Reference to the structural zone and wind zone for which the home is designed.

E. **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 or in the case if a declared disaster.

F. **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.

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 Planning Board, in reviewing the Special Use Permit application and 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.

(1) 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.

(2) 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.

(3) 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.

G. 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 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 Planning Board 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 Planning Board and Code Enforcement Officer may share such information with other applicants. By sharing such information the Planning Board 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 Planning Board, 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 Planning Board shall have authority to impose such reasonable conditions and restrictions as are directly 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 Planning Board shall issue or deny a Special Use Permit and the 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 the 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 for mine sites located in the Industrial District, a Special Use Permit issued by the Planning Board. Mining outside the Industrial District shall be permitted in a Planned Development District (PDD) approved and created by the Town Board pursuant to Article 11. In addition

to all other considerations permitted by law to be reviewed, the reviewing board(s) 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;

7. Water quality;

8. Other matters related to the State Environmental Quality Review.

5.7-2 Special Standards

In addition to other applicable standards and criteria, including those for Special Use Permits located in Article 6, the reviewing boards, in granting or denying an application, shall review applications for a Planned Development District, Special Use Permit and the Site Plan Review 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. If the reviewing board determines to grant an application it may impose:

1. Limitations and restrictions regarding ingress and egress to public thoroughfares controlled by local government;

2. Limitations and restrictions regarding routing of mineral transport vehicles on roads controlled by the local government;

3. Requirements and conditions as specified in the mined land reclamation permit issued by the NYSDEC concerning setbacks from property boundaries and public thoroughfare rights-of-way, natural or man-made barriers to restrict access, if required, dust control and hours of operation, when such requirements and conditions are established pursuant to subdivision 3 of §23-2711 of the NY Environmental Conservation Law;

4. Enforcement of reclamation requirements contained in mined land reclamation permits issued by the NYSDEC.

5.7-3 Preexisting Mines and Resource Extraction Activities

Any mine that is lawfully in existence on or before the effective date of 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 an existing 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 or expand the MLRL "Life of Mine" area would require Site Plan approval and a Special Use Permit. Where the Planning Board 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 compliance with the Special Use Permit provisions of this Law, as well as 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;

7. Water quality; and

8. Other matters related to the State Environmental Quality Review.

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 12 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 on a 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 three (3) 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 Planning Board 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.

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 seven (7) copies of the following together with whatever other information the Planning Board 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 Planning Board 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 Planning Board 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 Planning Board 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 Planning Board 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 Planning Board shall determine whether the application is complete for purposes of commencing the review process. If an application is determined to be incomplete, the Planning Board 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 Planning Board 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 Planning Board 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 Planning Board 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 adverse impact 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.

6.3-5 Referral to County Planning Commission

A. 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 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 Planning Board 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 Agricultural Data Statement

A. An agricultural 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 Planning Board 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 Planning Board shall hold a public hearing on a complete Special Use Permit application within sixty two (62) days from the determination of the Planning Board 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 Planning Board.

B. At least five (5) days prior to the date of such hearing, the Planning Board 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 Planning Board may require to be notified.

C. **Compliance with General Municipal Law 239-nn:** The Planning Board shall provide notice of the public hearing on a special permit to neighboring municipalities if the property is within 500 feet of an adjacent municipality.

6.3-8 Criteria

In considering and acting to grant or deny Special Uses, the Planning Board shall consider the public health, safety, and general welfare and whether the use will adversely affect the community or the environment. The Board shall also consider potential environmental impacts of the proposal, along with compliance with the following considerations:

A. Full conformance of the permit request with the provisions of this Local Law and the Comprehensive Plan;

B. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, drainage channelization structures and traffic controls. Consideration will also be given to the project's impact on the overall traffic circulation system of the neighborhood and the Town;

C. Adequacy of fire lanes and other emergency zones, traffic circulation and system of fire hydrants or fire protection;

D. Adequacy and arrangement of pedestrian traffic access and circulation, including, but not solely limited to, separation of pedestrians from vehicular traffic, control of intersections and overall pedestrian convenience; where appropriate, consideration of access and facilities for bicycles;

E. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs. As much as it is possible, consideration should be given to noise sources, privacy, prevailing wind

directions and seasonal sun movements when locating structures, patios and open spaces on parcels, exhaust fans and outdoor waste disposal locations;

F. Location, arrangement and setting of off-street parking and loading areas;

G. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and or noise deterring buffer between the project and adjoining properties;

H. In the case of an apartment house or multiple-dwelling complex, the adequacy of usable open space for playgrounds and informal recreation;

I. Adequacy of provisions for the disposal of stormwater and drainage, sanitary waste and sewage, water supply for both fire protection and general consumption, solid waste disposal and snow removal storage areas;

J. Adequacy of structures, roadways and landscaping in areas with moderate to high susceptibility to flooding and ponding and/or erosion;

K. Protection of adjacent properties against noise, glare, unsightliness or other objectionable features;

L. Retention of existing trees and vegetation for protection and control of soil erosion, drainage, natural beauty and unusual or valuable ecology;

M. Such use is reasonably necessary or convenient to the public health, welfare or the economic or social benefit of the community;

N. Such use is suitably located in relation to transportation, water and sewerage requirements of this chapter, or where not specifically required, that such facilities are otherwise adequate to accommodate anticipated use;

O. No undue traffic congestion or hazard will be created; and

P. The character of the neighborhood and values of surrounding property are reasonably safeguarded.

6.3-9 Action

A. The Planning Board 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 Planning Board 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. The Decision shall be filed with the Town Clerk.

B. In granting a Special Use Permit, the Planning Board 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 any 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 Planning Board 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 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. The Findings and Decision shall be filed with the Town Clerk.

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.

E. A request to waive certain of the Site Plan Checklist materials (listed below at 7.3-1) on the basis that the information requirements are not necessary to conduct an informed review of the project. Any such waiver request shall be made in writing, and shall contain statements of the reasons why the identified checklist 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. The Planning Board may waive such checklist requirements as it deems appropriate.

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. Ten (10) copies of the materials shall be submitted.

7.3-1 Site Plan Checklist

A. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;

B. North arrow, scale and date;

C. Boundaries of the property plotted to scale;

D. Existing watercourses;

E. Grading and drainage plan, showing existing and proposed contours;

F. Location, design, type of construction, proposed use and exterior dimensions of all buildings;

G. Location, design and type of construction of all parking and truck loading areas, showing access and egress;

H. Provision for pedestrian access;

I. Location of outdoor storage, if any;

J. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;

K. Description of the method of sewage disposal and location, design and construction materials of such facilities;

L. Description of the method of securing water and location, design and construction materials of such facilities;

M. Location of fire and other emergency zones, including the location of fire hydrants;

N. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;

O. Location, size and design and type of construction of all proposed signs;

P. Location and proposed development of all buffer areas, including existing vegetative cover;

Q. Location and design of outdoor lighting facilities;

R. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;

S. General landscaping plan and planting schedule;

T. An estimated project construction schedule;

U. Record of application for and approval status of all necessary permits from state and county officials; and

V. Other elements integral to the proposed development as considered necessary by the Planning Board.

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 Code Enforcement 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 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 adverse impact 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.

Section 7.12 Agricultural Data Statement

A. An agricultural 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. **Compliance with General Municipal Law 239-nn:** The Planning Board shall provide notice of any public hearing on a site plan to neighboring municipalities if the property is within 500 feet of an adjacent municipality.

C. 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.

D. 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. The Planning Board shall have the authority to extend a Site Plan prior to expiration if the Site Plan is still in compliance with this Local Law.

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 eight (8) 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 cannot 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 General Municipal Law 239-nn:** The Zoning Board of Appeals shall provide notice of the public hearing on a use variance to neighboring municipalities if the property is within 500 feet of an adjacent municipality.

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

L. **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 Land Use Law and other applicable regulations.

ARTICLE 10 AMENDMENT

Section 10.1 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 ten (10) 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

For changes or amendments that do not affect the entire Town or an entire zoning district, at least ten (10) days prior to the date of said public hearing, written notice of such proposed change or amendment shall be sent to all landowners within five-hundred (500) feet of the affected property. If the proposed change or amendment affects property within five hundred (500) feet of the boundaries of any adjoining Town or Village, such notice shall also 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 PLANNED DEVELOPMENT DISTRICTS - PDD

Section 11.1 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 an 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; and
- A more efficient and desirable use of open land.

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.

Section 11.2 Planned Development Districts Previously Established

A. The following PDDs have been established by the Town Board:
   (1) The Schoharie Business Park

B. The requirements for these PDDs are on file in the Town Clerk's office

Section 11.3 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 11.4 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 areas.

(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 this Local Law.

11.5. 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. The PDD will be subject to Site Plan by the Planning Board for both individual uses and the entire site pursuant to Article 7. Permits for uses(s) in an approved PDD may also be required by this Local Law or by the Town Board at the time a new PDD is created. Where a use in an approved PDD is permitted only upon the issuance of a Special Use Permit by the Zoning Board of Appeals, the provisions of Article 6 shall apply.

Section 11.6 Subdivision in a Planned Development District

If part of a PDD 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 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 12 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 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.

AGRICULTURAL DISTRICT: A district created under Section 303 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.

AIRPORT: An aviation facility owned by a private individual solely for the purpose of providing landing and takeoff capability for privately owned general aviation aircraft. The landing area shall not be equipped with facilities for the supplying, servicing and/or repairing of aircraft thereon or the receiving or discharging of passengers or cargo by air for hire.

ALTERATION: In regard 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 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.

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.

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

APARTMENT COMPLEX: Two (2) or more Apartment Houses located on a single parcel of land.

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/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-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 on an area of land five (5) acres or larger in size 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 Boards 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.

COUNTRY INN: A commercial establishment, managed by the property owner, where overnight lodging is provided to transient lodgers in one or more guest units, for compensation, for no more than ten (10) days. Country inns may have common sitting and dining areas and may have a restaurant in the principal building which may be open to the general public.

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. This term does not apply to licensed day care providers operating in an owner-occupied dwelling. See Home Based Business.

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.

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.

FLOODPLAIN: The area to be inundated by the 100-year flood as identified in the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency for the Town of Schoharie and its environs. Also referred to as a “Special Flood Hazard Area.”

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. The Floodway is typically, but not always, identified on the Flood Insurance Rate Maps prepared by the Federal Emergency Management Agency.

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 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 a building. 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: a licensed day care in an owner-occupied dwelling, art studio, dressmaker, barbershops, beauty parlors, indoor storage, 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 three (3) 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 three (3) or more such vehicles.

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

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.

LAND APPLICATION FACILITY: A site where any Natural Gas and/or Petroleum Extraction, Exploration or Production Wastes are applied to the soil surface or injected into the upper layer of the soil.

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 boarding house, 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 along 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 a factory and transported to a 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 – HEAVY: Consists of heavy industrial development, such as heavy manufacturing, storage, major freight terminals, waste and salvage, processing, transportation, major utilities, and other related uses, particularly those that require very large buildings, frequent heavy truck traffic for supplies or shipments, or that may require substantial mitigation to avoid sound, noise, and odor impacts to neighboring properties. Steel manufacturing, concrete and asphalt production and chemical manufacturing are examples of heavy manufacturing.

MANUFACTURING – LIGHT: Consists of wholesale and warehousing uses (including distribution operations) as well as those manufacturing uses that include fabrication, assembly or processing of materials that are in refined form and that do not in their transformation create smoke, gas, odor, dust, noise, vibration of earth, soot or lighting to a degree that is noticeable when measured at the property line of subject property. All operations are contained within an enclosed building with some limited outside storage. Light Manufacturing consists of uses that are complementary and not detrimental to neighboring commercial and residential districts or uses. Typical uses include warehousing and assembling and manufacturing of products from previously prepared materials. Retail sales (including related products) are permitted where the product is produced or warehoused on site. The products that are produced are typically, but not exclusively, for end-users rather than intermediates for use by other industries.

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 then 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. 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 12 hereof).

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.

MOTOR SPORTS FACILITY: Any facility, track or course upon which racing, timed events, trials, instructional driving or practice sessions are being conducted with motor vehicles, motorcycles or other motor powered vehicles.

MOTOR VEHICLE: Any vehicle operating with at least four (4) wheels, which is, or is designed to be, self-propelled or is designed or used for transporting persons or property. This definition does not include watercraft, airplanes, or aircraft.

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 EXPLORATION AND EXTRACTION AND RELATED ACTIVITIES: 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.

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.

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 RECREATION: 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; 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.

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 NYSERDA's list of eligible installers or NABCEP's list of certified installers may be deemed to be qualified solar installers if the Town 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.

RECREATIONAL VEHICLE (RV): Any portable recreation-type vehicle with its own wheels, that can be towed by an automobile or truck, that can be operated independently, or with utility connections, is used for temporary living, for travel, recreational or vacation purposes, is limited to eight (8) feet in width and up to forty (40) feet in length.

RECREATIONAL VEHICLE (RV) PARK: Any parcel of land of at least six (6) acres in area which is planned and improved for the placement of three (3) or more RV's which are used as temporary living quarters for less than one-hundred (180) consecutive days and do not serve as a principal residence.

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, mobile 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.

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.

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 are rated to produce up to 100 kilowatts (kW) at full capacity 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 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-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.

STABLE, COMMERCIAL: A building where at least three (3) horses are quartered, with remuneration.

STEEP SLOPES: An area proposed for construction where the slope is greater than 15%.

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 (2) or more lots, plots, blocks or sites, with or without streets or highways.. 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.

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.

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.

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 Corps. 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 TURBINE: A wind energy conversion system consisting of a wind turbine, a tower, and associated control or convention 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.

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.

Schedule A
Town of Schoharie Land Use Chart

	Rural-Agricultural	Commercial	Industrial	Hamlet	Barton Hill Overlay	Floodplain *	Planned Development District
RESIDENTIAL							
1-Family or 2-Family Dwelling	ZP	ZP	NA	ZP	ZP	ZP & FPP	ZC & SPR
Mobile Home	ZP	ZP	NA	NA	ZP	ZP & FPP	ZC & SPR
Accessory Structure	ZP	ZP	NA	ZP	ZP	ZP & FPP	ZC & SPR
Apartment House / Apartment Complex	SUP & SPR	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Multi-Family Dwelling	SUP & SPR	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Boarding House	SUP & SPR	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Mobile Home Park	SUP & SPR	NA	NA	NA	NA	NA	ZC & SPR
Townhouse / Condominium	SUP & SPR	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Accessory Apartment	ZP	SUP	NA	ZP	ZP	SUP & FPP	ZC & SPR
COMMERCIAL BUSINESS							
Bar / Nightclub	SUP & SPR	SPR	NA	SUP & SPR	NA	NA	ZC & SPR
Country Inn / Bed & Breakfast	SPR	SPR	NA	SPR	SPR	SPR & FPP	ZC & SPR
Day Care	SPR	SPR	NA	SPR	SPR	NA	ZC & SPR
Drive-Up Window	NA	SPR	NA	NA	NA	NA	ZC & SPR
Junkyard	NA	NA	SUP & SPR	NA	NA	NA	ZC & SPR
Home Based Business	ZP	ZP	NA	ZP	ZP	ZP & FPP	ZC & SPR
Hotel / Motel	SUP & SPR	SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Kennel	SUP & SPR	NA	SUP & SPR	NA	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Stable - Commercial	SPR	NA	NA	NA	SPR	SPR & FPP	ZC & SPR
Veterinarian	SUP & SPR	SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Nursery / Garden Shop	ZP	SPR	NA	SUP & SPR	SPR	SUP & SPR & FPP	ZC & SPR
Nursing/Convalescent Home	SUP & SPR	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Motor Vehicle Service Station	SUP & SPR	SUP & SPR	SUP & SPR	SUP & SPR	NA	NA	ZC & SPR
Office Building	SPR	SPR	NA	SPR	NA	SUP & SPR & FPP	ZC & SPR
Personal Service	SUP & SPR	SPR	NA	SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Service Business	SUP & SPR	SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR
Restaurant	SUP & SPR	SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Retail Building (Small Product)	SUP & SPR	SPR	NA	SUP & SPR	SUP &SPR	SUP & SPR & FPP	ZC & SPR
Retail Building (Large Product)	SUP & SPR	SUP & SPR	NA	SUP & SPR	NA	NA	ZC & SPR
Mixed Use	SUP & SPR	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR

ZP = Zoning Permit
FPP = Floodplain Permit
SUP = Special Use Permit
* See Official Floodplain Maps

SPR = Site Plan Review
ZC = Zoning Change
NA = Not Allowed

Schedule A
Town of Schoharie Land Use Chart

	Rural-Agricultural	Commercial	Industrial	Hamlet	Barton Hill Overlay	Floodplain *	Planned Development District
RECREATION/ENTERTAINMENT (PUBLIC USE)							
Indoor Recreation	SUP & SPR	SUP & SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Indoor Other (theater, music hall etc.)	SUP & SPR	SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Motor Sports Facility	NA	NA	NA	NA	NA	NA	ZC & SPR
Outdoor Recreation	SUP & SPR	SUP & SPR	NA	NA	NA	SUP & SPR & FPP	ZC & SPR
Campground	SUP & SPR	NA	NA	NA	NA	SUP & SPR & FPP	NA
Outdoor Other	SUP & SPR	SUP & SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
RV Park	SUP & SPR	NA	NA	NA	NA	SUP & SPR & FPP	NA
INDUSTRY							
Forestry Use & Structure	SUP & SPR	NA	SUP & SPR	SUP & SPR	SUP & SPR	ZP & FPP	ZC & SPR
Manufacturing - Heavy	NA	NA	SUP & SPR	NA	NA	NA	ZC & SPR
Manufacturing - Light	SUP/SPR	SPR	SPR	SUP/SPR	SPR	SUP & SPR & FPP	ZC & SPR
Mining/Resource Extraction	NA	NA	SUP & SPR	NA	NA	NA	ZC & SPR
Natural Gas Exploration and Extraction and Related Uses and Facilities	NA	NA	NA	NA	NA	NA	NA
Solar Farms	NA	NA	NA	NA	NA	NA	NA
R&D/Tech	SUP & SPR	SUP & SPR	SUP & SPR	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Truck Terminal / Heavy Equipment Storage	NA	SUP & SPR	SUP & SPR	NA	NA	NA	ZC & SPR
Warehouse	NA	SUP & SPR	SUP & SPR	NA	NA	NA	ZC & SPR
Wind Energy Facilities (Excluding Small Wind Turbines)	NA	NA	NA	NA	NA	NA	NA
GENERAL							
Airport	SUP & SPR	NA	NA	NA	NA	SUP & SPR & FPP	NA
Agriculture Use & Structure	ZP	ZP	NA	ZP	ZP	ZP & FPP	ZC & SPR
Cemetery	SUP & SPR	NA	NA	SUP & SPR	NA	NA	NA
Community Center	SUP & SPR	SUP & SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Hospital	SUP & SPR	SUP & SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Public / Semi-Public Facility	SUP & SPR	SUP & SPR	NA	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Public Utility / Facilities	SUP & SPR	SUP & SPR	SUP & SPR	SUP & SPR	NA	SUP & SPR & FPP	ZC & SPR
Roadside Stand	ZP	ZP	NA	ZP	ZP	SUP & SPR & FPP	ZC & SPR
Telecommunications	SUP & SPR	SUP & SPR	SUP & SPR	SUP & SPR	SUP & SPR	SUP & SPR & FPP	ZC & SPR

ZP = Zoning Permit
FPP = Floodplain Permit
SUP = Special Use Permit
* See Official Floodplain Maps

SPR = Site Plan Review
ZC = Zoning Change
NA = Not Allowed

Schedule A
Town of Schoharie Land Use Chart

	Rural-Agricultural	Commercial	Industrial	Hamlet	Barton Hill Overlay	Floodplain *	Planned Development District
Minimum Lot Size	2.5 Acres	2.0 Acres	2.0 Acres	0.5 Acres**	See RA	See Underlying District	Set During Local Law Process
Road Frontage	250 Feet	150 Feet	150 Feet	100 Feet			
Front Yard Setback	50 Feet	20 Feet	20 Feet	20 Feet			
Side Yard Setback	25 Feet	25 Feet	25 Feet	25 Feet			
Rear Yard setback	50 Feet	25 Feet	25 Feet	25 Feet			
Maximum Structure Height	35 Feet	35 Feet	35 Feet	35 Feet			
** Subject to Health Department approval for septic system							

Schedule B
Barton Hill Natural Resource Protection Overlay

Section 1. Application The rules and regulations set forth in this section shall apply to the springs and aquifer which comprise the ground water source of public water supply of the Village of Schoharie and known as the Young, Dugan and Truax springs, and to any other sources which may be developed in the future to serve as ground water sources of the water supply of the Village of Schoharie.

Section 2. Definitions

(1) Accidental Spill shall mean any intentional or unintentional action or omission resulting in an unpermitted releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of petroleum, petroleum products, septage, or toxic chemicals or substances on the watershed lands or into the waters which might flow or drain into waters of the aquifer.

(2) Aquifer:shall mean the saturated and unsaturated subsurface geologic formations which are now or may subsequently be developed for use as public water supply sources for the Village of Schoharie.

(3) Aquifer recharge area shall mean the land area where precipitation, snow, and rain percolates directly through the ground to an aquifer, and shall consist of known sinkholes, rock outcrops, caves, fissures, crevices and similar exposures in geologic formations and any tributary to the aquifer subsequently identified and recognized by the Town of Schoharie.

(4) Best management practices shall mean those methods and practices which are developed and adopted or promulgated by regulatory agencies including the New York State Department of Environmental Conservation, New York State Department of Health and Schoharie County Department of Health.

(5) Chloride salt shall mean the solid compounds or the solutions of potassium chloride (commonly used as fertilizer), calcium chloride (commonly used for winter road maintenance) or sodium chloride (commonly used for winter road maintenance and water softener regeneration).

(6) Composting toilet or dry toilet shall mean any receptacle for human excreta and/or kitchen waste which is a self-contained unit requiring periodic removal of composted, accumulated or stored material.

(7) Fertilizers (artificial) shall mean any commercially produced mixture generally containing phosphorus, nitrogen, and potassium which is applied to the ground to increase nutrients to plants.

(8) Ground water shall mean any water beneath the land surface that is under atmospheric pressure and that enters wells and springs serving as sources of water supply for the Village of Schoharie.

(9) Herbicide shall mean any substance used to destroy or inhibit plant growth.

(10) Human excreta shall mean human feces and urine.

(11) 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 are 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.

(12) Land application of wastewater shall mean the distribution of municipal, industrial agricultural or residential wastewater by spray irrigation, injection or direct flow, over the land surface with or without and underdrain system and point discharge(s).

(13) Linear distance shall mean the shortest horizontal distance from the nearest point of the structure or object to the (i) extension of the centerline of the wells, (ii) nearest edge of any spring, (iii) edge, margin and steep bank forming the ordinary high water line of a water course, and (iv) nearest edge of a sinkhole, crevice, fissure, cave, exposed bedrock or similar exposure tributary to the aquifer.

(14) Manure shall mean animal feces and urine.

(15) Pesticide shall mean any substance used to destroy or inhibit pests such as rodents and insects.

(16) Point source discharge shall mean discharge of pollutants resulting from facilities, systems and activities which operate under a permit issued by the appropriate state or local agency.

(17) Pollutant shall mean dredge, spoil, solid waste, incinerator residue, sewage, garbage, refuse, rubbish, sewage sludge, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial and municipal waste, manure, animal waste and agricultural waste.

(18) Radiation shall mean ionizing radiation, that is, any alpha particle, beta particle, gamma ray, x-ray, neutron, high speed electron, high speed proton and any other atomic particle producing ionization, but shall not mean any sound or radio wave, or visible, infrared, or ultraviolet light.

(19) Radioactive material shall mean any material in any form that emits radiation spontaneously.

(20) Refuse shall mean all putrescible and nonputrescible solid wastes including garbage, manure, rubbish, ashes, incinerator residue, street cleanings, dead animals, offal and solid commercial and industrial wastes.

(21) Refuse disposal area shall mean land used for the depositing of refuse from a single family, a member of which is the owner, occupant or lessee of said land, or any part of a farm on which only agricultural associated animal wastes resulting from the operation of such farm are deposited.

(22) Reservoir shall mean any natural or artificial lake or pond which is tributary to or serves as a source of the public water supply of the Village of Schoharie.

(23) Septage shall mean that residue removed from onsite sewage or wastewater disposal system.

(24) Sewage or wastewater shall mean any liquid or solid waste matter from a domestic, commercial, or industrial establishment which is normally carried off in sewers and waste pipes.

(25) Sewage treatment system shall mean any system used for disposing of sewage and includes treatment works.

(26) Sewage system cleaner or additive shall mean any solid or liquid material intended or used primarily for the purpose of cleaning, treating, or unclogging any part of a sewage system or any solid or liquid material intended or used primarily for the purpose of continuously or automatically deodorizing or disinfection of any part of a sewage system including but not limited to solid cakes or devices placed in plumbing fixtures.

(27) Sludge shall mean the solid residue resulting from municipal or industrial process or wastewater or water treatment which also produces a liquid stream of effluent.

(28) Spring resurgence protection area shall mean the area within a circle which has a radius of 250 feet from the spring, spring basin, intake or well for the Village of Schoharie.

(29) Toxic chemical or substance shall mean any organic or inorganic substance including but not limited to petroleum derivatives, any metallic elements including the transition series, and any hazardous wastes which pose a substantial present or potential threat of producing injury or disease upon exposure, ingestion, inhalation, or assimilation by a living organism.

(30) Treatment works shall mean any treatment plant, sewer, disposal field, lagoon, pumping station, septic system, constructed drainage ditch or surface water intercepting ditch, incinerator, area devoted to sanitary landfills or other works not specifically mentioned in this paragraph, installed for the purpose of treating, neutralizing, stabilizing or disposing of sewage.

(31) Watercourse shall mean a visible path through which surface water travels on a regular basis. It includes springs, streams, ponds and wetlands. Drainage areas which contain water only during and immediately after a rainstorm, and roadside ditches shall not be considered a watercourse.

(32) Watershed shall mean the area where water flows into the ground water supply of the Village of Schoharie.

(33) Watershed tributary to aquifer recharge area (or watershed) shall mean that land area delineated in the overlay map which is the tributary surface from which the aquifer is replenished by run-off to the aquifer recharge area. The boundaries of the overlay are defined as follows: From a point beginning at the intersection of the town lines of Schoharie, Wright (Schoharie County) and Duanesburg (Schenectady County), proceeding southerly along the boundary line of the towns of Schoharie and Wright to a point on that town borderline 500 feet north of State Rout 443 and then proceeding west along a line 500 feet parallel to State Route 443 until a point intersecting the lands of the Niagara Mohawk Power Corporation, and proceeding north along the eastern boundary of said lands to the intersection of said line with State Route 30; continuing along the southern border of State Route 30 to the intersection of State Route 30 and I-88, proceeding east along the southern boundary of I-88 to the town lines of Schoharie and Duanesburg (Schenectady County), following said town line east to the point of beginning.

(34) Water supply shall mean the public water supply of the Village of Schoharie.

(35) Well shall mean any present and future excavation used as a source of public water supply which derives water from the interstices of the rocks or soils which it penetrates including bored wells, drilled wells, and driven wells and excluding ditches or tunnels that lead ground water to the surface by gravity.

Section 3. General Prohibitions No person, including state agencies or political subdivisions having jurisdiction, shall perform any act or grant any permit or approval which may result in the contravention of the standards for raw water quality as contained in Part 170 Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York (10NYCRR Part 170).

Section 4. Specific Prohibitions The following specific prohibitions are applicable to the watershed tributary to the aquifer recharge area, or watershed:

4.1 On-Site Subsurface Sewage Treatment:

(a) All on-site subsurface sewage treatment systems serving single-family residences or facilities with flows of less than 1,000 gallons per day shall be designed, installed and maintained in accordance with the Schoharie County Sanitary Code and the standards promulgated in the Schoharie County Sanitary Code. The applicable standards and permit requirements of the New York State Department of Environmental Conservation shall apply to systems which flows equal to or in excess of 1,000 gallons per day or those which contain industrial wastewater.

(b) A permit is required prior to the installation of any new subsurface sewage treatment systems where none existed prior to the adoption of this regulation or where a building has a change in character (e.g., residential to commercial use). This permit must be obtained from the appropriate state or local agency having jurisdiction. Conditions for a permit shall include a percolation test, approved design, inspection of the installation prior to backfilling, and the issuance of a Certificate of Approval.

(c) No portion of the new subsurface sewage treatment system shall be constructed or placed within 250 feet linear distance of the aquifer recharge area. No subsurface sewage treatment system shall be constructed or installed unless there is at least five feet of acceptable overburden between the bottom of the seepage unit and creviced or fissured rock. Acceptable fill material may be placed in accordance with generally accepted standards to achieve this separation.
(d) Where rapid percolation is indicated, such as rock fissures, the use of subsurface disposal systems may be prohibited.
(e) The use of sewage system cleaners or additives is prohibited.

4.2 Point Source Discharge: Point source discharges to the tributary streams are prohibited unless tertiary treatment or equivalent is provided for domestic wastewaters. A permit is required prior to the installation of a point source discharge from the state or local agency having jurisdiction.

4.3 Storm Sewer Outlets: No new storm sewer outlets shall discharge within 100 feet of the aquifer recharge area.

4.4 Snow Disposal: The dumping of snow removed from streets, roads and parking areas directly into streams or within 250 feet of the aquifer recharge area is prohibited.

4.5 Refuse Disposal Areas and Junkyards:
(a) No refuse shall be deposited on or beneath the surface of the ground within a 250 foot linear distance of the aquifer recharge area.
(b) Refuse or solid waste disposal facilities shall be prohibited.
(c) No junkyards shall be located within 250 feet linear distance of the aquifer recharge area. New junkyards are prohibited.

4.6 Animal Wastes:
(a) No concentration of animal wastes from an agricultural operation including but not limited to manure piles, feedlots, barnyards, and yarding areas, shall be located with 250 feet linear distance from the aquifer recharge area.
(b) Drainage from barnyards, feedlots, yarding areas or manure piles shall not be discharged directly to watercourses or to the aquifer recharge area. Such drainage shall be dispersed over the surface of the ground at a minimum distance of 250 linear feet from any watercourse or from the aquifer recharge area.
(c) Provisions shall be made for satisfactory disposal of milk house waste either by surface or subsurface irrigation that prevents any discharge to any watercourse or the aquifer recharge area. Such facilities shall be located at least 100 feet linear distance from any watercourse or aquifer recharge area. No subsurface irrigation is allowed unless there is at least five feet of overburden above bedrock.
(d) Manure shall not be spread on frozen ground if there is any likelihood that surface run-off will be carried into streams or the aquifer. Burial of manure, excluding normal tilling practices, is prohibited.

4.7 Septage and Sludge Disposal: The disposal of septage, sludge or human excreta into any watercourse, on the surface of the ground or by underground burial is prohibited.

4.8 Industrial Sludges and Toxic Chemicals:

(a) No industrial sludges and toxic chemicals shall be stored except under permit by the New York State Department of Environmental Conservation.

(b) Disposal of industrial sludges and toxic chemicals is the responsibility of the owner or operator of the storage facility.

(c) Industrial sludges and toxic chemicals shall not be buried in the soil, spread upon the surface of the ground, allowed to enter ground waters, or discharged to watercourses.

(d) Transportation of toxic chemicals is prohibited except under permit of New York State Department of Transportation and in conformity with the requirements of Article 2, Section 14-f of the Transportation Law and all regulations adopted pursuant to that statute.

4.9 Radioactive Material: Disposal of radioactive material is prohibited.

4.10 Fertilizer Use:

(a) Open storage of artificial fertilizers for commercial use is prohibited.

(b) Agricultural use of fertilizers shall be in conformance with best management practices as developed by the New York State Soil and Water Conservation Committee and implemented by the preparation and use of farm plans as required by the Soil and Water Conservation District Law, Article 2, Section 9, subdivison 7a.

(c) Fertilizer use for non-farm and non-residential application shall be in accordance with best management practices as developed under item 4.10 (b) above.

(d) The injection of liquid fertilizer into the ground shall be in accordance with best management practices as developed under item 4.10 (b) above.

4.11 Pesticide and Herbicide Use:

(a) All pesticide and herbicide storage, use and application shall be under permit as provided in New York State Environmental Conservation Law, Article 33.

(b) Disposal of container or unused pesticides and herbicides is prohibited except in accordance with the permit issued indicated under item 4.11 (a) above.

(c) Use of streams or watercourses for make-up or washing of equipment is prohibited.

4.12 Accidental Spills:

(a) Oil spills shall be reported and cleaned up immediately pursuant to the navigation Law, Article 12, Sections 170 through 197.

(b) Spills of any other materials stored in bulk shall be reported as required by New York State Environmental Conservation Law, Article 17, Section 1743. Clean-up of spills is the responsibility of the carrier.

(c) The Schoharie County Department of Health, the Town Board of Schoharie and the Board of Trustees of the Village of Schoharie shall be advised of any accidental spills immediately.

(d) Storage of petroleum products or any other contaminating material is prohibited unless measures have been taken to insure that leakage will not occur.

4.13 Stockpiles: Storage of chloride salts and sand/salt mixtures is prohibited within a five hundred (500) linear foot distance of a watercourse or the aquifer recharge area except in weather-proof buildings or water-tight vessels.

4.14 Deicing Salt Application: Deicing salt use is permitted if restricted to the minimum amount needed for public safety in accordance with best management practices developed by the New York State Department of Transportation.

4.15 Cemeteries: No interment of a human body shall be made within a linear distance of two hundred fifty (250) feet of a watercourse or the aquifer recharge area.

4.16 Sediment Generation:

(a) Farm tillage practices shall be in conformance with best management practices as developed by the New York State Soil and Water Conservation Committee and implemented by the preparation and use of farm plans as required by Soil and Water Conservation District Law, Article 2, Section 9, subdivision 7a.

(b) All farms shall have an operational farm plan pursuant to item (a) in place within one year of the adoption of these regulations.

(c) Soil erosion and sediment production by stream and road bank erosion shall be evaluated by the Schoharie County Soil and Water Conservation District and appropriate remedial action taken where needed.

(d) All land disturbing activity including general construction, highway construction, access road construction and maintenance is prohibited except where remedial measures have been put in place to minimize erosion and sediment production, and to prevent the exposure of bedrock.

Section 5. Specific Prohibitions Within the Aquifer Recharge Area Except to the extent that more stringent standards or regulations are set forth in this Subdivision all regulations applicable to the watershed shall apply to the aquifer recharge area.

5.1 Subsurface Treatment Systems: The construction and installation of subsurface sewage treatment systems is prohibited.

5.2 Snow Disposal: The stockpiling or dumping of snow removed from streets, roads and parking areas on the ground surface within the aquifer recharge area is prohibited.

5.3 Refuse Disposal Areas and Junkyards: The establishment of refuse disposal areas or junkyards is prohibited.

5.4 A**nimal Wastes:** The disposal of farm animal waste is prohibited.

5.5 Fertilizer Use: The use of artificial fertilizer is prohibited.

5.6 Pesticide and Herbicide Use: The use of pesticides or herbicides is prohibited.

5.7 Underground Storage Tanks and Pipelines:

(a) The construction, placement or replacement of underground tanks, containers or pipelines for petroleum products or any other pollutant is prohibited.

(b) All persons owning property containing such underground storage tanks or containers shall notify the Town of Schoharie Code Enforcement Officer of their existence and location.

5.8 Stockpiles: Storage of chloride salt is prohibited.

5.9 Cemeteries: The establishment of new cemeteries is prohibited.

5.10 Land Application of Sewage: Land application of sewage or wastewater is prohibited.

5.11 Undergroung Injection: Underground injection of **any pollutant** including, but not limited to sewage wastewater is prohibited.

5.12 Stormwater Run-Off Recharge Basins: Use of recharge basins is prohibited.

5.13 Land Application of Septage and Sludge: Land application of septage and sludge is prohibited.

5.14 Wastewater Lagoons and Pits: Use of wastewater lagoons and pits for temporary storage of sewage is prohibited.

5.15 Excavations: Excavations or cut-ins which expose groundwater permanently or during maximum elevation of the water table, or which significantly reduce the thickness of soil cover and thereby ease the entrance of contaminants into the groundwater are prohibited.

5.16 Mining: The establishment of sand and gravel or limestone mining operations is prohibited.

5.17 Public Utility Transmission: The construction of new overhead transmission lines, liquefied natural gas lines or other pipelines for materials that may impair water quality is prohibited.

5.18 Oil and Gas Wells: The construction of oil and gas wells is prohibited.

5.19 Improperly Constructed or Abandoned Wells: All water supply wells and abandoned wells shall meet the requirements of 10NYCRR Appendix 5-A entitled "Recommended Standards for Water Works", 10NYCRR Appendix 5-B entitled "Rural Water Supply" and the state and local agency having jurisdiction.

5.20 Industrial Sludges and Toxic Chemicals: The establishment of industrial sludge and toxic chemical storage, and disposal facilities is prohibited.

Section 6. Spring Resurgence Protection Area All systems, facilities, and activities are prohibited except for collection, treatment, control and transmission of water. The area shall not be used for any other purpose than water supply.

Section 7. Variances

(1) The Zoning Board of Appeals for the Town of Schoharie may, on written application and after review, grant a variance from a specific provision of these Watershed Rules and Regulations in specific cases subject to appropriate conditions which shall include a time schedule for compliance where:
   (i) such variance is in harmony with the general purpose and intent of these Watershed Rules and Regulations;
   (ii) the Zoning Board of Appeals determines that adequate provisions have been made for the maintenance of the integrity of the water supply system; and
   (iii) there are practical difficulties or unnecessary hardships in carrying out the strict letter of the provision.
(2) The State Commissioner of Health may authorize the Zoning Board of Appeals in writing, to issue variances on his behalf, subject to such limitations as he deems appropriate.
(3) A copy of any variance and time schedule approved by the Town of Schoharie Zoning Board of Appeals shall be submitted to the State Commissioner of Health at the time of issuance.

Section 8. Inspection The Town Board of Schoharie or any person or persons that it designates may make regular and thorough inspections of the land within the Barton Hill Overlay District to ascertain whether the rules and regulations set forth in this section are being complied with. It shall be the duty of the aforesaid Town Board to cause copies of any rules and regulations violated to be served upon the persons violating the same together with notices of such violations. If such persons served do not immediately comply with the rules and regulations, the Town Board shall notify the State Commissioner of Health of such violations and may enforce compliance pursuant to Article 2 of the Zoning Law including penalties, fines and injunctive relief as set forth in said Article.