



# Zoning Law

## **Zoning Law**

**PORTER, NEW YORK**

**Adopted November 8, 2010**

**Prepared By**

**peter j. smith & company, inc.**

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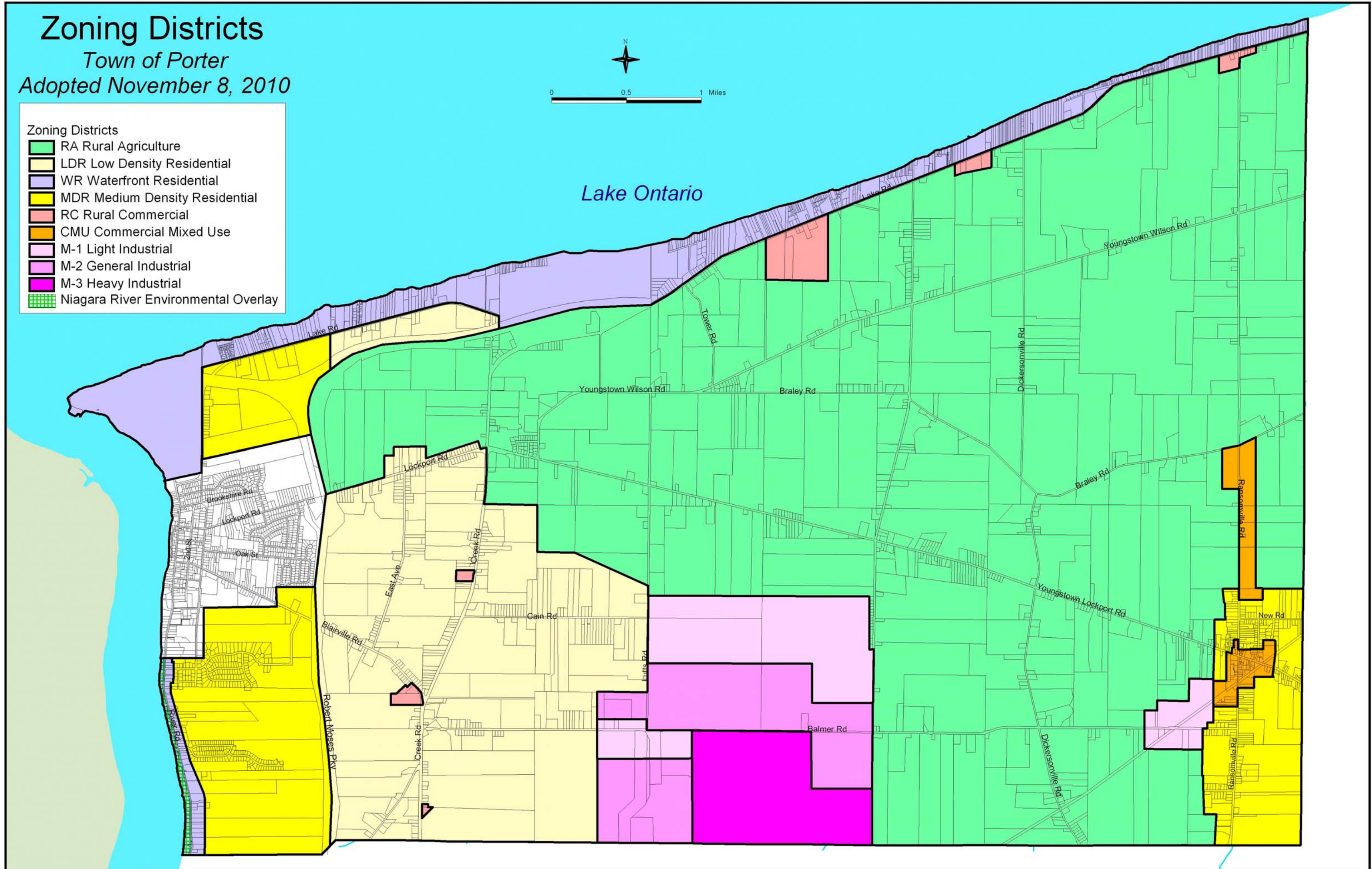
# Zoning Districts

*Town of Porter*

*Adopted November 8, 2010*

## Zoning Districts

- RA Rural Agriculture
- LDR Low Density Residential
- WR Waterfront Residential
- MDR Medium Density Residential
- RC Rural Commercial
- CMU Commercial Mixed Use
- M-1 Light Industrial
- M-2 General Industrial
- M-3 Heavy Industrial
- Niagara River Environmental Overlay



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## Article I. General Provisions

### § 1 Short Title

This law shall be known as the “Town of Porter Zoning Law” for the Town of Porter in the County of Niagara, State of New York.

### § 2 General Purpose and Intent

A. The purpose of this Zoning Law is to provide for the orderly growth in the Town of Porter in accordance with the Town’s Comprehensive Plan adopted December 13, 2004 and Farmland Protection Plan adopted December 11, 2006. These documents establish the goals for the Town of Porter, which are to:

- (1) Establish design and planning standards which promote and sustain the Rural Character of the Town.
- (2) Protect open space, scenic vistas, and environmentally sensitive land.
- (3) Protect historically and archeologically sensitive locations.
- (4) Protect and promote cohesive neighborhoods
- (5) Protect the agricultural resources of the Town
- (6) Promote the economic and operational viability of agricultural uses.
- (7) Promote responsible residential and commercial development.
- (8) Enhance the aesthetic aspects of the entire community.

B. This Law establishes and implements regulatory powers to the ends that adequate light, convenient access and safety from fire, flood and other dangers may be secured; that the taxable value of land and buildings throughout the Town may be conserved and enhanced; that congestion in the public streets may be lessened or avoided; that the hazards to persons and damage to property resulting from the accumulation or runoff of storm water may be lessened or avoided; that sites, areas and structures of historical, architectural and aesthetic importance may be preserved; and that the public health, safety, comfort, and welfare may otherwise be promoted. To these ends this Law is enacted to:

- (1) Guide and regulate the orderly growth, development and redevelopment of the Town in accordance with a well considered plan and with long-term objectives, principles and standards deemed beneficial to the interest and welfare of the people.
- (2) Protect the established character and the social and economic well-being of both private and public property.
- (3) Promote, in the public interest, the utilization of land for the purposes for which it is most desirable.
- (4) Regulate and limit the height, bulk and location of buildings.
- (5) Establish, regulate and limit the building or setback lines on or along streets in the Town.
- (6) Regulate and limit the density of population and the intensity of uses of lot areas.



- (7) Regulate and determine the area of yards and other open spaces within and surrounding buildings.
- (8) Classify, regulate and restrict the location of trades and industries and the location of buildings designed for specified industrial, business, residential and other uses.
- (9) Divide the entire Town into districts according to use of land and buildings, height and bulk of buildings, intensity of use of lot areas, area of open spaces and other classifications as may be deemed best suited to regulate development.
- (10) Establish standards and guidelines to which buildings or structures in such districts shall conform.
- (11) Provide regulations pertaining to pre-existing lots, structures and uses that do not conform to the regulations, standards, restrictions and limitations established by this Law.
- (12) Provide for variances from such regulations, standards, restrictions and limitations.
- (13) Provide for Special Permits Uses, Planned Development District Uses, and uses requiring special approval, within the established districts.
- (14) Provide for the orderly amendment of this Law.

### § 3 Applicability

#### A. Relationship to Other Standards

In their interpretation and application, the provisions of this Chapter shall be held to be minimum requirements adopted for the promotion of the public health, morals, safety and general welfare. Whenever the requirements of this Chapter are at variance with the requirements of any other lawfully adopted local rules, regulations, statutes or ordinances, the most restrictive thereof, or those imposing the highest standards, shall govern. Nothing contained herein shall be deemed to limit the right to farm as set forth in Article 25-AA of the NYS Agriculture & Markets Law. While the regulations contained herein are intended to be followed to the greatest extent possible, there is a general understanding that the farming community may have unique situations that may require waiving certain regulations.

#### B. General Scope

##### (1) Territorial Application

This Law shall apply to all structures, land and uses within the limits of the Town of Porter, New York, not including the Village of Youngstown. No uses shall be permitted within any public right-of-way.

(2) General Application

All buildings and structures erected hereafter, all uses of land or buildings established hereafter, all structural alterations or relocations of existing buildings occurring hereafter, and all enlargements of, additions to, changes in and relocations of existing uses occurring hereafter shall be subject to all requirements of this Law which are applicable to the zoning districts in which such buildings, structures, uses or land are located. Existing buildings, structures and uses that do not comply with the regulations of this Law shall be allowed to continue subject to the provisions of Article IX relating to nonconformities.

(3) General Prohibition

No building or structure; no use of any building, structure or land shall be established, altered, moved, divided, merged or maintained in any manner except as authorized by the provisions of this Law.

(4) Private Agreements

This Law is not intended to annul or otherwise interfere with any easement, covenant or other private agreement or legal relationship; provided, however, that where the regulations of this Law are more restrictive or impose higher standards or requirements than such easements, covenants or other private agreements or legal relationships, the regulations of this Law shall govern.

C. Existing Variances and Special Permits

Any Variance or Special Use Permit lawfully issued prior to the effective date of this Law, or any amendment thereof, which could be lawfully issued pursuant to the provisions in effect after such effective date, shall be deemed to be and continue valid after such effective date. Any structure or use lawfully authorized by any such Variance or Special Permit that could not be so issued after such effective date shall be allowed to continue subject to the provisions of Article IX dealing with lawfully existing nonconformities.

D. Building Permits Issued Prior to Effective Date

(1) Completion of Construction

Nothing in this Law shall be deemed to require any change in the plans, construction or designated use of any structure in the event that:

- (a) A building permit for such structure was lawfully issued prior to the effective date of this Law, or any amendment thereof; and
- (b) Such permit had not by its own terms expired prior to such effective date; and
- (c) Such permit was lawfully and properly issued in accordance with the law prior to such effective date; and
- (d) Construction pursuant to such permit is commenced prior to the expiration of such permit and within 90 days of its issuance and is thereafter diligently pursued to completion.



E. Pending Applications

Any complete application submitted prior to the effective date of the adoption of this Zoning Law shall proceed under the regulations in place at the time such application was determined complete.

F. Repeal of Prior Provisions

Local Law No. 1 of 1968 known as The Zoning Law of Town of Porter, and as amended to date is hereby repealed in its entirety. Such repeal shall not affect or impair any act done, offense committed or right accruing, accrued or acquired, or liability, penalty, forfeiture or punishment incurred prior to the time such repeal takes effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted, as fully and to the same extent as if such repeal had not been effected.

G. Severability - Provisions Declared Invalid

- (1) If any court of competent jurisdiction shall adjudge any provision of this Law to be invalid, such judgment shall not affect any other provisions of this Law.
- (2) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Law to a particular property, building or structure, such judgment shall not affect the application of the said provision to any other property, building or structure.

H. Effective Date

This Law shall become effective immediately on the date of its adoption. Whenever used in this Law, the term "effective date" shall mean November 8, 2010.

## Article II. District Regulations

### § 4 Zoning Districts Established

In order to carry out the purposes and provisions of this Law, the Town of Porter is hereby divided into the following districts:

CATEGORY	DISTRICT
Agricultural District	RA – Rural Agricultural
Residential Districts	LDR – Low Density Residential WR – Waterfront Residential MDR – Medium Density Residential
Commercial Districts	RC – Rural Commercial CMU – Commercial/ Mixed Use
Industrial District	M-1 Light Industrial M-2 General Industrial M-3 Heavy Industrial
Special Districts	Senior Housing District NRE – Niagara River Environmental Overlay

### § 5 Zoning Map

- A. The boundaries of the zoning districts are hereby established on a map entitled “Zoning Map of the Town of Porter” which map accompanies and is hereby declared to be a part of this Law.
- B. There shall be only one (1) Official Zoning Map that shall be kept in the office of the Town Clerk, and it shall bear the Seal of the Town of Porter, a certification that it is the Official Zoning Map of the Town of Porter and its date of adoption. The Zoning Map shall show the boundaries of the zoning districts established and which together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Law.
- C. Any changes made in zoning district boundaries or other matters portrayed on the Zoning Map under the provisions set forth herein shall be permanently affixed to the Zoning Map within ten (10) days after the amendment has been approved by the Town Board and shall convey information as to the date and nature of the change. No amendment to this Law that involves matters portrayed on the Zoning Map shall become effective until such change and entry has been made on said Zoning Map and has been attested by the Town Clerk.

## § 6 District Boundaries

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

- A. Where the designation on the Zoning Map indicates a boundary approximately upon a road, the center line of the road shall be construed to be the boundary;
- B. Where the designation on the Zoning Map indicates a boundary approximately upon a lot line, such lot line shall be construed to be the boundary.

## § 7 Permitted Uses Table

The following table presents a list of permitted uses, the district that the use is permitted in, and the permit process necessary for each use, which may vary by zoning district.

- A. A blank in the table means that use is not permitted in that district. An individual may request an application for a use variance for non permitted uses.
- B. Any use, which is not specifically listed on the permitted use table, is not permitted in any district unless it is determined by the Code Enforcement Officer, in consultation with the Planning Board, that the use is similar to one (1) of the uses in the permitted use table.

Figure II-1 Permitted Primary Uses

P	Permitted subject to building permit only
SP	Subject to Site Plan Approval
SU	Subject to Special Use Permit following Site Plan Approval

\* Subject to Building Permit only when part of a legitimate farm operation in a certified Agriculture District or an existing farm protected by Niagara County Right to Farm Law. The Planning Board may for new and significant projects, request a streamlined site plan review according to and as outlined in Ag & Markets Guidance Document for Zoning

Use	RA	LDR	WR	MDR	CMU	RC	M-1	M-2	M-3
Accessory Apartment	SU	SU	SU	SU	SU	SU			
Adult Oriented Establishment								SU	SU
Agricultural Enterprise	SP*	SP*			SP	SP			
Airport/Landing Field	SU					SU		SU	
Animal Day Care, Kennel, or Shelter	SP					SP			
Animal Hospital	SP				SP	SP			
Animal Race Track	SU								
Apartment Building				SP	SP				
Apartment Complex				SU	SU				
Banquet Facility					SP	SP			
Bar, Cocktail Lounge, Tavern					SU	SU	SU	SU	

P	Permitted subject to building permit only
SP	Subject to Site Plan Approval
SU	Subject to Special Use Permit following Site Plan Approval

\* Subject to Building Permit only when part of a legitimate farm operation in a certified Agriculture District or an existing farm protected by Niagara County Right to Farm Law. The Planning Board may for new and significant projects, request a streamlined site plan review according to and as outlined in Ag & Markets Guidance Document for Zoning

Use	RA	LDR	WR	MDR	CMU	RC	M-1	M-2	M-3
Bed & Breakfast Establishment	SP	SP	SP	SP	SP	SP			
Boarding/Rooming House	SP			SP	SP				
Building Supply Store					SP	SP	SP	SP	
Camping Ground	SU								
Car Wash					SP	SP	SP	SP	
Catering Facility					SP	SP			
Cemetery	SP								
Clubs or Organizations	SP				SP	SP			
Commercial Recreation Facility	SU				SU	SU			
Commercial Stable	SP*	SU*			SP*	SP*			
Communication Antenna or Tower	SU					SU	SU	SU	
Convenience Store					SP	SP	SP		
Day Care Center	SP			SP	SP	SP	SP	SP	
Day Care Home	P	P	P	P	P				
Drive-thru Facility					SP	SP	SP	SP	
Drugstore/Pharmacy					SP	SP			
Educational Institution	SU	SU	SU	SU	SU				
Farm Market	SP*	SU			SP*	SP*			
Farm Operations	SP*	SP*			SP*	SP*			
Farm Pond	SU*	SU*			SU*	SU*			
Farm Worker Residence	SP*	SP*			SP*	SP*			
Food Processing Plant	SU				SU	SU		SU	
Funeral Home					SP	SU			
Garden Center	SP				SP	SP	SP	SP	
General Retail					SP	SP			
Golf Course	SU	SU		SU					
Grocery Store					SP				
Heliport	SU				SU	SU	SU	SU	
Home Occupation	SU	SU	SU	SU	SU	SU			



P	Permitted subject to building permit only
SP	Subject to Site Plan Approval
SU	Subject to Special Use Permit following Site Plan Approval

\* Subject to Building Permit only when part of a legitimate farm operation in a certified Agriculture District or an existing farm protected by Niagara County Right to Farm Law. The Planning Board may for new and significant projects, request a streamlined site plan review according to and as outlined in Ag & Markets Guidance Document for Zoning

Use	RA	LDR	WR	MDR	CMU	RC	M-1	M-2	M-3
Hospital	SU				SU				
Hotel					SU				
Hunting Club	SU						SU		
Industrial Uses							SU	SU	SU
Junk Yard								SU	
Machine Shop					SU	SU	SP	SP	
Marina			SU						
Medical Clinic					SP	SP			
Mini-storage Facility						SU	SP	SP	
Mixed-use Buildings					SP	SP			
Mobile Home Parks	SU								
Motel				SP	SP	SP			
Motor Vehicle Race Track	SU								
Nursery School			SP	SP	SP	SP			
Nursing Home/ Assisted Living Facility	SU			SU	SU				
Office					SP	SP	SP	SP	
Office Park							SP	SP	
Outdoor Furnace	SP	SP							
Outdoor Material Storage					SU	SU	SP	SP	SP
Personal Service Establishment					SP	SP			
Pet Store					SP				
Place of Worship	SU	SU	SU	SU	SU	SU			
Public and Semi-Public Uses	SP	SP	SP	SP	SP	SP			
Public Utilities	SU	SU	SU	SU	SU	SU	SU	SU	SU
Recreational Pond	SU	SU							
Research Laboratory					SP		SP	SP	SP
Restaurant					SP	SP	SP	SP	
Retail Plazas					SP	SU			
Roadside Farm Stand	P	P	P	P	P	P	P		

P	Permitted subject to building permit only
SP	Subject to Site Plan Approval
SU	Subject to Special Use Permit following Site Plan Approval

\* Subject to Building Permit only when part of a legitimate farm operation in a certified Agriculture District or an existing farm protected by Niagara County Right to Farm Law. The Planning Board may for new and significant projects, request a streamlined site plan review according to and as outlined in Ag & Markets Guidance Document for Zoning

Use	RA	LDR	WR	MDR	CMU	RC	M-1	M-2	M-3
Sales and Service of Garden/Farm Equipment					SP	SP	SP	SP	
Single-family Detached Dwelling	P	P	P	P	P				
Specialty Retail					SP	SP			
Taxi/Limousine Service					SP	SP			
Theater					SU				
Townhouse				SP	SP				
Townhouse Development				SU	SU				
Two-family Dwelling	SU	SU		P	P				
Vehicle Rental/Dealership					SU	SU	SP	SP	
Vehicle Repair Shop/Body Shop					SU	SU	SP	SP	
Vehicle Service (Gas) Station					SP	SP	SP	SP	
Vehicle Storage Yard							SP	SP	
Warehouse/Distribution							SU	SU	SU
Wind Energy Conversion System (Commercial)	SU						SU	SU	
Wind Energy Conversion System (Non-Commercial)	SU*	SU*				SU*	SU*	SP*	
Wineries	SP*	SP*			SP*	SP*	SP	SP	

## § 8 RA – Rural Agricultural Zoning District

### A. Purpose

The purpose of the RA District is to protect the agricultural land resources of the Town, permit rural residential development, and to promote the rural character and the continued economic and operational viability of agricultural enterprises.

In the RA District agriculture shall be the primary land use. Any agricultural practice determined to be a sound agricultural practice by the New York State Commissioner of Agriculture and Markets, pursuant to Article 25-AA, § 308, shall be deemed an appropriate use of the land and its resources and shall not constitute a private nuisance. Agricultural practices include, but are not limited to, practices necessary for on-farm production, preparation and marketing of agricultural commodities, such as the operation of farm equipment; proper use of agricultural chemicals and other crop protection methods; direct sale to consumers of agricultural commodities or foods containing agricultural commodities produced on-farm; and construction and use of farm structures.

### B. Yard and Bulk Requirements

RA Rural Agricultural District			
REQUIREMENT	AGRICULTURAL/ FARM OPERATION	RESIDENTIAL	OTHER USES
LOT WIDTH REQUIREMENTS			
Minimum Lot Width and Road Frontage	200 feet	125 feet	300 feet
LOT AREA REQUIREMENTS			
Minimum Lot Area	5 Acres	31,250 Sq. ft.	2 Acres (87,120 Sq. ft.)
Maximum Building Coverage	10 Percent	20 Percent	5 Percent
Maximum Lot Coverage	15 Percent	30 Percent	10 Percent
YARD REQUIREMENTS			
Minimum Front Yard Setback	60 feet	60 feet	50 feet
Minimum Side Yard Setback	50 feet	15 feet	50 feet
Minimum Rear Yard Setback	50 feet	50 feet	50 feet
BUILDING HEIGHTS			
Maximum Building Height – Principal Use or Structure	35 feet	35 feet	35 feet
Maximum Building Height – Accessory Use or Structure*	125 feet	25 feet	25 feet

\*See additional requirements for Accessory Uses or Structures in § 25 of this Law.

### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.

## § 9 LDR- Low Density Residential District

### A. Purpose

The LDR District is designed to provide for the development of areas that are occupied primarily by single-family residences. The purpose of the LDR District is to promote orderly development of the Town and encourage well-designed living environments that protect and stabilize the residential characteristics of the Town. The LDR District will result in areas that provide opportunities for larger yards and houses and serve as a transition between agricultural uses and more dense development. Agricultural uses are still permitted in the LDR District and shall be granted the same protection as granted in the RA District.

### B. Yard and Bulk Requirements

**LDR Low Density Residential District**

REQUIREMENT	RESIDENTIAL	AGRICULTURAL/ FARM OPERATION	OTHER PERMITTED USES
<b>LOT WIDTH REQUIREMENTS</b>			
Minimum Lot Width and Road Frontage	100 feet	200 feet	125 feet
<b>LOT AREA REQUIREMENTS</b>			
Minimum Lot Area	20,000 sq. ft	5 Acres	1/2 Acre (21,780 sq. ft)
Maximum Building Coverage	20 Percent	10 Percent	20 Percent
Maximum Lot Coverage	30 Percent	15 Percent	35 Percent
<b>YARD REQUIREMENTS</b>			
Minimum Front Yard Setback	60 feet	60 feet	60 feet
Minimum Side Yard Setback	15 feet	50 feet	25 feet
Minimum Rear Yard Setback	25 feet	50 feet	40 feet
<b>BUILDING HEIGHTS</b>			
Maximum Building Height – Principal Use or Structure	35 feet	35 feet	35 feet
Maximum Building Height – Accessory Use or Structure*	25 feet	125 feet	25 feet

\*See additional requirements for Accessory Uses or Structures in §25 of this Law.

### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.



## § 10 WR –Waterfront Residential

### A. Purpose

The purpose of the WR District is to allow residential development along the shore of Lake Ontario. The District creates greater setbacks and smaller lot coverage to open up views of the Lake. The District also allows some water dependent uses that would provide public access to the lake.

### B. Yard and Bulk Requirements

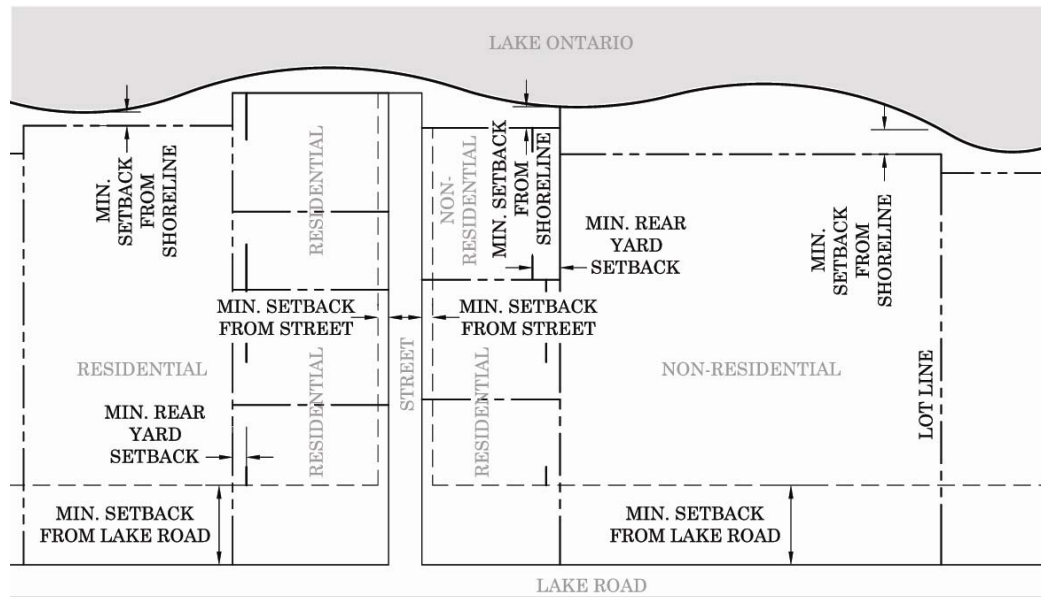
**WR –Waterfront Residential District**

REQUIREMENT	RESIDENTIAL	NON-RESIDENTIAL
<b>LOT WIDTH REQUIREMENTS</b>		
Minimum Lot Width and Road Frontage	100 feet	100 feet
<b>LOT AREA REQUIREMENTS</b>		
Minimum Lot Area with sewer	12,000 sq. ft.	20,000 sq. ft.
Minimum Lot Area without sewer	20,000 sq.ft.	20,000 sq.ft.
Maximum Building Coverage	20 Percent	20 Percent
Maximum Lot Coverage	25 Percent	25 Percent
<b>YARD REQUIREMENTS</b>		
Minimum Setback from Road*	20 feet*	60 feet
Minimum Setback from Shoreline (Shoreline considered front yard)	25 feet**	40 feet**
Minimum Side Yard Setback	15 feet	40 feet
Minimum Rear Yard Setback	20 feet	40 feet
<b>BUILDING HEIGHTS</b>		
Maximum Building Height – Principal Use or Structure	35 feet	35 feet
Maximum Building Height – Accessory Use or Structure***	15 feet	15 feet

\* The minimum setback from Lake Road shall be 60 feet

\*\* Or as established by the DEC

\*\*\* See additional requirements for Accessory Uses or Structures in §25 of this Law.



### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street or water frontage.

## § 11 MDR- Medium Density Residential District

### A. Purpose

The purpose of the MDR District is to provide for the development of neighborhoods that include a mixture of single, two and multi-family housing and complementary services, encouraging higher densities of new development.

### B. Yard and Bulk Requirements

#### MDR - Medium Density Residential District

REQUIREMENT	RESIDENTIAL			NON-RESIDENTIAL
	Single family	Two-family	Multi	
LOT WIDTH REQUIREMENTS				
Minimum Lot Width and Road Frontage	80 feet	80 feet	150 feet	100 feet
LOT AREA REQUIREMENTS				
Minimum Lot Area with Sewer	15,000 Sq. ft.	18,000 Sq. ft.	40,000 Sq. ft.	20,000 Sq.ft.
Minimum Lot Area without Sewer	20,000 Sq. ft.	20,000 Sq. ft.	40,000 Sq. ft.	20,000 Sq.ft.
Maximum Building Coverage	30 Percent	30 Percent	30 Percent	40 Percent
Maximum Lot Coverage	50 Percent	50 Percent	50 Percent	60 Percent
YARD REQUIREMENTS				
Minimum Front Yard Setback	60 feet	60feet	60 feet	60 feet
Minimum Side Yard Setback*	10 feet	10 feet	10 feet	15 feet
Minimum Rear Yard Setback	20 feet	20 feet	20 feet	20 feet
BUILDING HEIGHTS				
Maximum Building Height – Principal Use or Structure	35 feet	35 feet	35 feet	35 feet
Maximum Building Height – Accessory Use or Structure**	25 feet	25 feet	25 feet	25 feet
Maximum Residential Density for multi-family structures - 6Dwelling Units per acre***				

\* Side yard setbacks shall not apply to the attached side of attached single-family dwellings (i.e. townhouses).

\*\* See additional requirements for Accessory Uses or Structures in §25 of this Law.

\*\*\*6 dwelling units per acre is contingent upon adequate storm water management/drainage.

### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.

## § 12 CMU- Commercial Mixed Use District

### A. Purpose

The purpose of the CMU District is to acknowledge the historical pattern of land use development in certain areas of the Town where residential and nonresidential uses co-exist, and to encourage revitalization of those areas for a mix of residential housing types which may be located suitably among the commercial and other nonresidential uses permitted in the mixed use districts. The District is designed to allow for greater densities when the area is serviced with sewers.

### B. Yard and Bulk Requirements

CMU- Commercial Mixed Use District				
REQUIREMENT	RESIDENTIAL			NON-RESIDENTIAL
	Single family	Two-family	Multi	
LOT WIDTH REQUIREMENTS				
Minimum Lot Width and Road Frontage	60 feet	80 feet	80feet	50 feet
LOT AREA REQUIREMENTS				
Minimum Lot Area With sewer	8,000 sq.ft.	10,000 sq.ft.	20,000 sq.ft.	10,000 sq.ft.
Minimum Lot Area Without sewer	20,000 sq.ft.	20,000 sq.ft.	20,000 sq.ft.	20,000 sq.ft.
Maximum Building Coverage	30 Percent	40 Percent	50 Percent	60 Percent
Maximum Lot Coverage	50 Percent	60 Percent	70 Percent	80 Percent
YARD REQUIREMENTS				
Minimum Front Yard Setback	50 feet	50 feet	50 feet	40 feet
Minimum Side Yard Setback	10 feet	10 feet	10 feet	10 feet
Minimum Rear Yard Setback	20 feet	20 feet	20 feet	20 feet
BUILDING HEIGHTS				
Maximum Building Height – Principal Use or Structure	35 feet	35 feet	35 feet	35 feet
Maximum Building Height – Accessory Use or Structure**	18 feet	18 feet	18 feet	18 feet
Maximum Residential Density for multi-family structures - 6Dwelling Units per acre				

\* Side yard setbacks shall not apply to the attached side of attached single-family dwellings (i.e. townhouses).

\*\*See additional requirements for Accessory Uses or Structures in §25 of this Law.

### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.



D. Design Standards

The purpose of design standards is to provide standards for property owners, architects, and contractors to aid in the preparation of appropriate plans, speed the site plan process, and enhance and promote quality development.

The following standards shall apply to all non-residential lots in the CMU District. Every effort shall be made to conform to design and lot development standards. However, the Planning Board may waive or adjust any standard based upon topography, use, or location.

(1) Context

- (a) Buildings and storefronts shall be compatible with adjacent buildings or storefronts in terms of proportion, color, and materials.
- (b) Buildings shall generally maintain the alignment of horizontal elements of adjacent buildings.

(2) Lot

- (a) All permeable surfaces of the developed areas of the lot shall be covered with grass or vegetative ground cover.
- (b) A minimum of one (1) street tree for every 35 feet of frontage shall be planted.
- (c) Shared parking lots and interconnected service drives to reduce curb cuts and maintain road safety and function shall be encouraged.
- (d) The addition of benches and landscaped seating areas shall be encouraged.
- (e) Parking shall be located to the side or preferably to the rear of the building.
- (f) Parking lots shall comply with §78 of this Law.

(3) Orientation

- (a) Primary buildings and primary building entrances shall be oriented toward the public street so as to define the street edge and contribute to a dynamic pedestrian and street environment.

(4) Façade

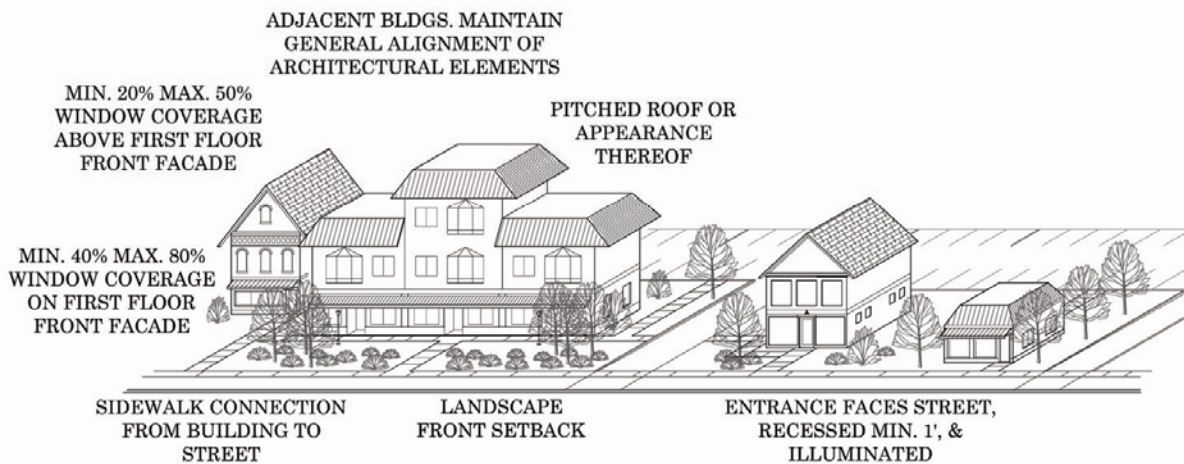
- (a) Any facade facing a sidewalk, public right-of-way or public street shall have an active building elevation. Active building elevations shall include windows, building entrances and other architectural features that enhance the pedestrian scale and experience of the building facade.
- (b) Blank walls, those devoid of openings such as windows and transparent doors shall not be permitted on the front façade of any building.
- (c) Facades fronting more than one (1) street shall be equal in material.
- (d) The exterior finish materials on all facades shall be approved by the Planning Board upon site plan review.
- (e) In addition to windows a maximum two (2) construction materials shall be used on a street façade.

- (f) Excluding windows, a maximum of three (3) colors shall be permitted with earth tone or pastel preferred.
- (g) Façade lighting shall be wall mounted no higher than the top of the first floor.
- (5) Entrance
  - (a) Entrances shall be articulated.
  - (b) Pedestrian entrances shall be provided on all street frontages.
  - (c) Pedestrian entrances shall be recessed from the building face a minimum of one (1) foot.
- (6) Windows
  - (a) Building façades shall have ample windows. A minimum 40% window coverage and a maximum 80% window coverage are recommended on the first floor street façade. A minimum 20% window coverage and a maximum 50% window coverage are recommended on all other floors of the street façade.
  - (b) First floor windows shall be transparent.
- (7) Character

Buildings shall have the appearance of a pitched roof.
- (8) Maintenance

All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning.

## COMMERCIAL MIXED USE DISTRICT



### § 13 RC- Rural Commercial District

#### A. Purpose

The Purpose of the Rural Commercial District is to allow limited commercial uses to exist within the Rural Agriculture District. Uses that support agricultural operations are encouraged. The district also permits uses that require a greater lot area but do not generate significant traffic.

#### B. Yard and Bulk Requirements

RC - Rural Commercial District	
REQUIREMENT	All Uses
LOT WIDTH REQUIREMENTS	
Minimum Lot Width	200 feet
LOT AREA REQUIREMENTS	
Minimum Lot Area	1 Acre
Maximum Building Coverage	25 Percent
Maximum Lot Coverage	60 Percent
YARD REQUIREMENTS	
Minimum Front Yard Setback	60 feet
Minimum Side Yard Setback	40 feet
Minimum Rear Yard Setback	40 feet
BUILDING HEIGHTS	
Maximum Building Height – Principal Use or Structure	35 feet
Maximum Building Height – Accessory Use or Structure*	35 feet

\*See additional requirements for Accessory Uses or Structures in §25 of this Law.

#### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.

#### D. Design Standards

The purpose of design standards is to provide standards for property owners, architects, and contractors to aid in the preparation of appropriate plans, speed the site plan process, and enhance and promote quality development.

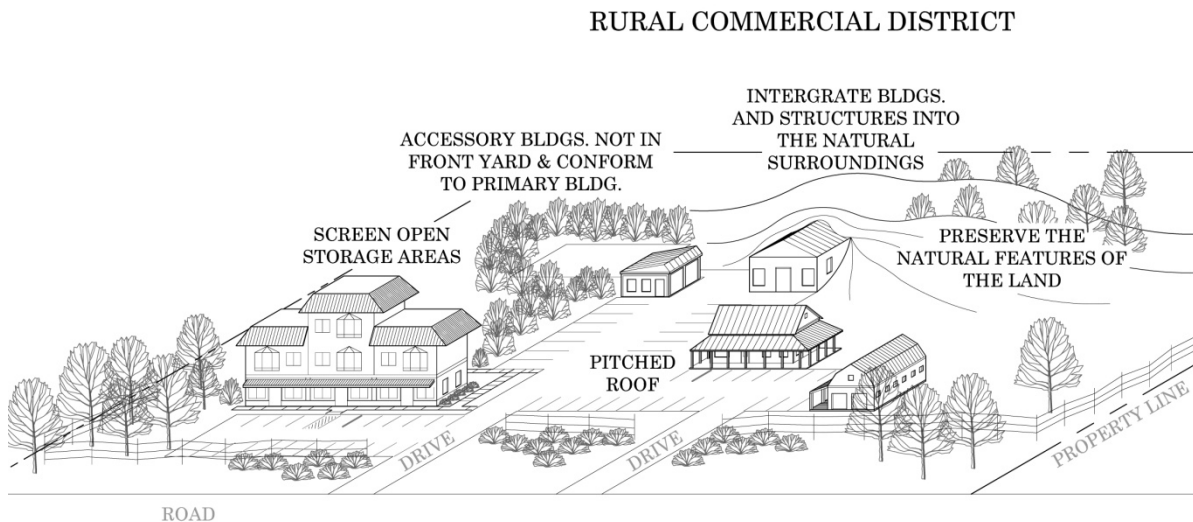
The following standards shall apply to all non-residential lots in the RC District. Every effort shall be made to conform to design and lot development standards. However, the Planning Board may waive or adjust any standard based upon topography, use, or location.

##### (1) Context

- (a) Where practicable, primary buildings shall be parallel to the street frontage property line.
- (b) Primary buildings shall generally maintain the alignment of horizontal elements of adjacent buildings.

- (2) Lot
  - (a) All permeable surfaces of the developed areas of the lot shall be covered with grass or vegetative ground cover.
  - (b) A minimum of one (1) street tree for every 35 feet of frontage shall be planted or as determined upon site plan review.
  - (c) Accessory buildings shall not be located in the front yard
  - (d) All open storage areas shall be screened.
  - (e) Natural features of the land shall be preserved.
  - (f) Buildings shall be integrated into the natural surroundings.
- (3) Character
  - (a) Buildings shall have the appearance of pitched roofs.
- (4) Façade
  - (a) The exterior finish materials on all facades shall be approved by the Planning Board upon site plan review.
  - (b) No more than three (3) colors shall be used on any one (1) façade.
- (5) Maintenance

All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning.



**§ 14 M-1 Light Industrial**

**A. Purpose**

The purpose of the M-1 District is to provide areas within the Town for offices, research development and related activities; light manufacturing; auto repair and service related specialty shops that need only a limited amount of area

**B. Yard and Bulk Requirements**

M-1 Light Industrial		
REQUIREMENT	Auto Repair/Related	All Other Uses
LOT WIDTH REQUIREMENTS		
Minimum Lot Width	150 feet	150 feet
LOT AREA REQUIREMENTS		
Minimum Lot Area	50,000 ft²	2 ½ acres
Maximum Building Coverage	As the use, yard, parking, buffer and landscaping requirements permit	
Maximum Lot Coverage		
YARD REQUIREMENTS		
Minimum Front Yard Setback	100 feet	100 feet
Minimum Side Yard Setback	50 feet	50 feet
Minimum Rear Yard Setback	50 feet	50 feet
BUILDING HEIGHTS		
Maximum Building Height – Principal Use or Structure	50 feet	50 feet
Maximum Building Height – Accessory Use or Structure*	80 feet	80 feet

\* See additional requirements for Accessory Uses or Structures in §25 of this Law.

**C. Front Yard Modification**

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.

**D. Buffer Requirements**

- (1) 75 ft. where adjoining a residential district
- (2) 25 ft. where adjoining other non-industrial districts and public streets
- (3) All buffers shall be landscaped and maintained by the owner

**E. Permitted Uses**

As permitted in the Permitted Use Table, Article II, §7 of this Law.



F. Prohibited Uses

- (1) All uses of land, buildings, structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration, or toxic substances or conditions.
- (2) Residences
- (3) Processing, storage or disposal of hazardous or other wastes.

G. Design Standards

The purpose of design standards is to provide standards for property owners, architects, and contractors to aid in the preparation of appropriate plans, speed the site plan process, and enhance and promote quality development.

The following standards shall apply to all lots in the M-1 District.

- (1) Any fencing required upon site plan review shall be placed between the buffer area and the building.
- (2) All blank walls shall be buffered.
- (3) Parking shall be located behind the front façade and screened.
- (4) The exterior finish materials on all facades shall be approved by the Planning Board upon site plan review
- (5) All permeable surfaces of the developed area of the lot shall be covered with grass or vegetative ground cover.
- (6) A minimum of one (1) street tree for every 35 feet of frontage shall be planted, or as determined upon site plan review.
- (7) All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning.

## § 15 M-2 General Industrial

### A. Purpose

The purpose of the M-2 District is to provide areas within the Town for the location of heavier manufacturing and processing facilities as well as offices, research and service establishments where compatible industries will be located in an organized manner so as to insure the efficient development of the industrial use and compatibility with adjacent districts. Such district is designed to encourage the development of a balanced employment mix within the Town and improve the tax base.

### B. Yard and Bulk Requirements

M-2 General Industrial	
REQUIREMENT	All Uses
LOT WIDTH REQUIREMENTS	
Minimum Lot Width	200 feet
LOT AREA REQUIREMENTS	
Minimum Lot Area	2 ½ acre
Maximum Building Coverage	As use, yard, parking, buffer and landscaping requirements permit
Maximum Lot Coverage	
YARD REQUIREMENTS	
Minimum Front Yard Setback	100 feet
Minimum Side Yard Setback	50 feet
Minimum Rear Yard Setback	50 feet
BUILDING HEIGHTS	
Maximum Building Height – Principal Use or Structure	50 feet
Maximum Building Height – Accessory Use or Structure*	80 feet

\* See additional requirements for Accessory Uses or Structures in §25 of this Law.

### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.

### D. Buffer Requirements

- (1) 75 ft. where adjoining a residential district
- (2) 25 ft. where adjoining other non-industrial districts and public streets
- (3) All buffers shall be landscaped and maintained by the owner

### E. Permitted Uses

As permitted in the Permitted Use Table, Article II, §7 of this Law.

F. Prohibited Uses

- (1) All uses of land, buildings, structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration, or toxic substances or conditions.
- (2) Residences
- (3) Processing, storage or disposal of hazardous or other wastes.

G. Design Standards

The purpose of design standards is to provide standards for property owners, architects, and contractors to aid in the preparation of appropriate plans, speed the site plan process, and enhance and promote quality development.

The following standards shall apply to all lots in the M-2 District.

- (1) Any fencing required upon site plan review shall be placed between the buffer area and the building.
- (2) All blank walls shall be buffered.
- (3) Parking shall be located behind the front façade and screened.
- (4) The exterior finish materials on all facades shall be approved by the Planning Board upon site plan review
- (5) All permeable surfaces of the developed area of the lot shall be covered with grass or vegetative ground cover.
- (6) A minimum of one (1) street tree for every 35 feet of frontage shall be planted, or as determined upon site plan review.
- (7) All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning.

## § 16 M-3 Heavy Industrial

### A. Purpose

To provide an area within the Town for the location of processing facilities and related activities strictly regulated for the purpose of minimizing or eliminating any adverse impacts.

### B. Yard and Bulk Requirements

M-3 Heavy Industrial	
REQUIREMENT	All Uses
LOT WIDTH REQUIREMENTS	
Minimum Lot Width	200 feet
LOT AREA REQUIREMENTS	
Minimum Lot Area	2 ½ acre
Maximum Building Coverage	As use, yard, parking, buffer and landscaping requirements permit
Maximum Lot Coverage	
YARD REQUIREMENTS	
Minimum Front Yard Setback	100 feet
Minimum Side Yard Setback	50 feet
Minimum Rear Yard Setback	50 feet
BUILDING HEIGHTS	
Maximum Building Height – Principal Use or Structure	50 feet
Maximum Building Height – Accessory Use or Structure*	120 feet

\* See additional requirements for Accessory Uses or Structures in §25 of this Law.

### C. Front Yard Modification

Front yard setback shall be within 10% of the average setback of all primary buildings within 300 feet along the same street frontage.

### D. Buffer Requirements

- (1) 75 ft. where adjoining a residential district
- (2) 25 ft. where adjoining other non-industrial districts and public streets
- (3) All buffers shall be landscaped and maintained by the owner

### E. Permitted Uses

- (1) As permitted in the Permitted Use Table, Article II, §7 of this Law.
- (2) Storage, processing and disposal of hazardous and industrial non-hazardous wastes as regulated by the New York State Department of Environmental Conservation with the following additional regulations:
  - (a) Such activity shall not be conducted within 300 feet of any residence or public street.

- (b) Buffer strips measuring a minimum of 150 feet in width shall surround such activity.
- (c) During the course of the evaluation, consideration shall be given by the Board of Appeals to provision by the applicant for perpetual care of the facility

F. Prohibited Uses

- (1) All uses of land, buildings, structures or industrial processes that may be noxious or injurious by reason of the production or emission of dust, smoke, refuse matter, odor, gas, fumes, noise, vibration, or toxic substances or conditions.
- (2) Residences.

G. Design Standards

The purpose of design standards is to provide standards for property owners, architects, and contractors to aid in the preparation of appropriate plans, speed the site plan process, and enhance and promote quality development.

The following standards shall apply to all lots in the M-3 District.

- (1) Any fencing required upon site plan review shall be placed between the buffer area and the building.
- (2) All blank walls shall be buffered.
- (3) Parking shall be located behind the front façade and screened.
- (4) The exterior finish materials on all facades shall be approved by the Planning Board upon site plan review
- (5) All permeable surfaces of the developed area of the lot shall be covered with grass or vegetative ground cover.
- (6) A minimum of one (1) street tree for every 35 feet of frontage shall be planted, or as determined upon site plan review.
- (7) All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning.

§ 17 Reserved

§ 18 Reserved



## Article III. Special District/Development Regulations

### § 19 Senior Housing District

#### A. Purpose

The purpose of a Senior Housing District shall be to provide specialized living quarters for elderly and retired citizens who wish to live independently, but who prefer the advantages to be found in living in apartments designed specifically for community living of elderly citizens who do not require specialized continuing medical care.

Senior Housing Districts are zoning districts created to accommodate senior housing units. They are unmapped floating districts created by the Town Board of the Town of Porter. A newly created Senior Housing District shall be drawn on the Official Zoning Map only after it has been created by the Town Board. Rezoning is required before any land may be used as a Senior Housing District. The procedure for rezoning to be used is that set forth in § 109.

#### B. Qualifications for Eligibility

- (1) The Senior Housing District may be applied to any lot or group of contiguous lots having a total area of at least three (3) acres.
- (2) The surrounding land uses, both current and projected, must be compatible with the living environment required by seniors and be free from potential health and safety issues.

#### C. Permitted Uses

- (1) Senior citizens dwelling apartments for the express habitation by elderly persons.
- (2) Essential services, including buildings and facilities which are reasonably necessary to meet the proper maintenance, administration, security, off-street parking, storage, fencing, and utility system needs of the development.
- (3) In addition, the following accessory uses are permitted provided that such facilities are restricted in their use to residents of the development and their guests:
  - (a) Meeting rooms, multipurpose rooms, lounges, lobby areas or other similar common spaces.
  - (b) Game rooms, art and craft rooms, workshops, exercise rooms, libraries or other similar indoor recreation or leisure facilities.
  - (c) Outdoor sitting areas, game areas, walking trails or other similar outdoor recreation or leisure facilities.
- (4) The following accessory uses are permitted, provided that such facilities are managed as part of the building or complex of building and restricted in their use to residents of the building or building complex and their guests, and, further provided that there are no external advertising signs for such facilities:
  - (a) A common kitchen and dining room
  - (b) A beauty and/or barber shop, provided that the maximum floor area devoted to such use is no more than two hundred fifty (250) square feet.
  - (c) A self-service laundry.

- (d) A coin-operated vending machine room, provided that the maximum floor area devoted to such use is no more than two hundred fifty (250) square feet.
  - (e) Office space for a visiting doctor, medical infirmary or clinic and/or social service delivery.
- D. Occupancy Restrictions
  - (1) Occupancy of dwelling units shall be for residential purposes only.
    - (a) Each dwelling unit shall be subject to a recorded deed restriction limiting occupancy to at least one person fifty-five (55) years of age or older.
    - (b) Notwithstanding the provisions of this Section, one unit in a development may be occupied by a building superintendent or project manager and his/her family
- E. Requirements for the Senior Housing District
  - (1) Lot and Yard Requirements
    - (a) Minimum lot area- 3 acres.
    - (b) Minimum lot frontage – 200 feet
    - (c) Minimum front yard setback – 60 feet
    - (d) Minimum side yard setback – 40 feet
    - (e) Minimum rear yard setback – 30 feet
    - (f) Maximum building coverage – 40%
    - (g) Maximum lot coverage – 60%
    - (h) Height – No building shall be more than 2 ½ stories or 35 feet high.
  - (2) Density

In each case, the Planning Board shall determine the appropriate unit density. Density shall not exceed 15 dwelling units per acre.
  - (3) Common Open Space

Usable common open space shall be provided at the ratio of fifty (50) square feet per dwelling unit. Such space shall consist of both active and passive recreation amenities such as patio areas, shaded sitting areas, walking and jogging trails.
  - (4) Public services
    - (a) The following public services are required.
      - (i) Public sewer
      - (ii) Stormwater drainage facilities approved by the Engineer for the Town
      - (iii) A fire alarm system in each unit with an alarm interconnection to the entire structure and an appropriate county public safety answering point, such as the Niagara County Sheriff's Department.



- (iv) Cable television service
    - (v) Telephone service
  - (b) All utilities must be placed underground.
- (5) Design Standards
  - (a) Exterior design and architectural design shall provide that no exterior building wall be more than 125 feet long without a minimum six-foot offset.
  - (b) Apartment sizes and amenities shall conform to all applicable federal or New York State standards for housing for the well-elderly as may be established from time to time.
  - (c) All exterior and architectural design plans must be approved by the Planning Board.
- (6) Landscaping

Landscaping shall be approved by the Planning Board. Lot areas which are not required for buildings, structures or parking shall be landscaped with grass, decorative trees or shrubs. A plan which shows the location and plant species of plant material shall be provided.
- (7) Parking ratio

Parking spaces shall be provided at a ratio of 1.5 parking spaces per dwelling unit, and one visitor parking space per 10 dwelling units.
- (8) Outdoor storage

Any outdoor storage of garbage and rubbish shall be in containers which are enclosed in such a way to be concealed from the public view and inaccessible to children, dogs and vermin. Such appropriate enclosures shall include screens, fences, stockade fences, walls, etc.
- (9) Buffers
  - (a) A ten-foot wide landscaped area shall be provided along all property lines, excluding points of ingress and egress and property lines adjacent to existing commercial uses. This landscaped area shall be densely planted with a mixture of shrubs and trees. All of these shall be no less than six feet high to create an opaque screen.
  - (b) All landscaped areas along property lines which are crossed by access drives may be planted with low shrubs no greater than three feet high and with a branching habit no more than eight feet wide; further, no planting shall cause a hazardous condition by interfering with the normal line of sight (350 feet in either direction) needed for safe entering and exiting maneuvers by motor vehicles.
- (10) Site plan review

Once land is rezoned, the site plan must be approved by the Planning Board pursuant to § 106.

F. Miscellaneous regulations

- (1) In any project whereby offering plans for senior citizen multiple residence housing are required to be filed with the New York State Attorney General, the same must be filed with the Town Clerk not less than 96 hours prior to the time when such offering plan shall be filed with the New York State Attorney General.
- (2) The Planning Board may waive or modify standards, if necessary, to comply or adjust to the requirements of state or federally funded projects.
- (3) For all projects within this district; all parking areas, entries, corridors, passages, utility areas and front landscaping must be provided adequate lighting for safety purposes. Lights shall be adjusted so as not to shine onto adjacent properties. Lights must be controlled by a time clock or positive photo cell switching so as to ensure adequate lighting during all dark hours.
- (4) For all projects within this district, any owner of a building or premises used or erected as senior housing designated primarily to provide living and dining accommodations for persons over the age of 55 shall file with the Town Clerk a signed, sworn affidavit, on or before the 1<sup>st</sup> of January of every year, stating that all senior citizen multiple resident housing requirements mandated by law or by regulations of the Town, County, State, or federal government, or any agencies thereof, are being and will continue to be complied with.
- (5) In any project within this district, a designated utility area shall be provided for laundry purposes. At least one washer and one dryer for every 10 units must be provided

**§ 20 Niagara River Environmental Overlay**

**A. Purpose**

The purpose of this Section is to establish the Niagara River frontage in the Town as an environmental protection area.

**B. Permit Requirement**

- (1) No structure shall be erected or made use of except pursuant to a special permit.
- (2) All structures and uses require a permit from the Army Corp of Engineers and the Department of Environmental Conservation.
- (3) A site plan is required showing the use of the top of the high bank, the slope of the bank and the waterfront.

**C. Permitted Uses**

- (1) Private Boat House
- (2) Private dock on a site with at least 50 feet of river frontage for not more than four (4) boats for non-commercial use.
- (3) Private Hunting Blind
- (4) Other Private Recreational Structures
- (5) The above uses shall be accessory uses to a dwelling on the same premises, east or west of River Road.

**D. Height Limitations**

No structure shall extend above the ground level of the high bank of the Niagara River.

## § 21 Cluster Developments

### A. Intent & Purpose

The purpose of cluster development shall be to enable and encourage flexibility of design and development of land in such a manner as to further the goals of the Town of Porter's Comprehensive Plan and enhance and preserve the natural and scenic qualities of open land. This includes the preservation of a unique or significant feature of a site such as important woods, wildlife habitat, endangered species, unusual land formations, or an important view or aesthetic/scenic component of the Town. In some instances, the cluster development concept may be utilized to create an important recreational, scenic element or open space buffer for the community. In the RA District, Cluster developments may also be used to preserve prime agricultural land. It is not the intent of cluster development to create useless open space that serves no purpose for the citizens of the Town. This development alternative shall result in design and development which promotes the most appropriate use of the land and facilitates the adequate, economical provision of streets and utilities.

### B. Authority

Pursuant to the authority granted by §278 of Town Law, the Town Board of the Town of Porter does hereby authorize the Planning Board of the Town of Porter to approve cluster development simultaneously with the approval of a plat or plats. Approval of cluster developments shall be subject to the conditions set forth in this chapter and in Town Law §278, and the subdivision approval process set forth in the Code of the Town of Porter.

### C. Conditions

Cluster development shall not be a use allowed by right. The procedure set forth herein and the authorization of cluster development may be followed and allowed at the discretion of the Planning Board if, and in the Planning Board's judgment, its application would benefit the Town, meet the Town's goals, and the objectives and the purposes of this article. The Planning Board may suggest submission of a cluster development proposal, but may not require cluster development. In addition, an applicant may request Planning Board approval for a cluster development subject to the same criteria as set forth in this Section.

### D. Limitations

- (1) Cluster development may be allowed in the following districts, if and when public sewer is available: LDR, MDR and RA. In the RA District, A central sewer system may be utilized to serve the cluster subdivision at the discretion of the Planning Board and subject to all other codes applicable to such systems.
- (2) The utilization of cluster development shall require a minimum land area of 10 acres.

### E. Density

- (1) A cluster development shall result in a permitted number of building lots, which shall not exceed the maximum number which could be permitted, in the Planning Board's judgment, in the zoning district in which the cluster development lies.

F. Dual Plats Required

At the time of submission of the sketch or concept plan or in the event that the developer elects to submit a preliminary plan, at the time of such submission, two plans shall be submitted with one layout designating the layout of a standard subdivision in the underlying zoning district and the second layout showing the proposed cluster development.

- (1) Each lot in the standard subdivision layout shall meet the minimum lot size and lot width requirements of the Zoning Law of the Town of Porter for the underlying zoning district.
- (2) The standard subdivision layout shall be utilized to determine the maximum density for the cluster development and shall be consistent with federal, state and Town laws, including, but not limited to, laws regulating:
  - (a) Floodways, floodplains,
  - (b) Wetlands,
  - (c) Subdivision regulations,
  - (d) Zoning.

G. Plat Requirements

The plat showing such cluster developments shall depict the areas within which such structures may be located with building footprints, the height and spacing of buildings, open spaces, and their landscaping, off-street open and enclosed parking spaces, streets, driveways, and any other features required by the Planning Board. The dwelling units, as permitted, may be, at the discretion of the Planning Board, in detached, semi-detached, attached or multifamily structures.

H. Layout Limitations

Areas which would not be available for construction on standard layout, in the judgment of the Planning Board, must be preserved as open space on the standard subdivision plan, including, but not limited to:

- (1) Portions required for set aside for drainage basins or drainage purposes;
- (2) All streets and rights-of-way (public or private);
- (3) Major utility easements, portions of the developed area which are not available for building because of slopes, soil conditions, or other conditions rendering the area not suitable for development.

I. Additional Requirements

In addition to the above, cluster developments shall meet the following criteria, which shall not be waived by the Planning Board absent a variance from the Zoning Board of Appeals:

- (1) A cluster development shall never set aside less than 30% of the total area of the development for common usage in accordance with the provisions of this chapter (exclusive of lands not available for the conventional layout).
- (2) No structure shall exceed 35 feet in height.
- (3) No structure in a cluster development shall be closer to a preexisting street than a structure in a standard subdivision.

- (4) Frontage and lot area shall be determined by the Planning Board based upon the permissible number of dwelling units, the open space requirements, and compliance with the regulations of this Section. However, no lot width for a detached single-family dwelling shall be reduced to less than 60 feet;
- (5) No rear yard shall have a depth of less than 20 feet.
- (6) The minimum width of any side yard shall be 10 feet.
- (7) All structures shall be set back a minimum distance of 45 feet from the center line of the street.
- (8) In addition, for attached single-family dwelling units, and semi-detached and detached dwelling units and townhouse units, two-units and greater, the following requirements shall be met:
  - (a) These units shall be separated from any existing detached single-family homes by a minimum of 100 feet. Other buffering requirements, such as landscaped berms, may also be required.
  - (b) The maximum group length of a single structure shall be 160 feet.
  - (c) Proper garbage and waste collection areas must be provided and depicted on the proposed plan.
  - (d) A minimum of two off-street parking spaces shall be provided for each unit, either on the lot of each unit or in common parking areas available within 300 feet of the unit for which it is intended. In certain circumstances where adequate on-street parking cannot be provided for visitors, a visitor's parking area may be required by the Planning Board.
  - (e) Sidewalks or other types of walkways may be required along the roadways, or connecting features within the development. Such connectivity shall be developed as part of the project.
  - (f) All electrical and telephone lines shall be placed underground within the development.
  - (g) Applications for these types of developments must include sample architectural elevations of the buildings being proposed for the site. In reviewing these, the Planning Board shall take into consideration their appearance relative to surrounding uses and the impacts on the views from surrounding properties.
  - (h) All new roads and utilities being created for a condominium ownership development shall be owned and maintained by the condominium association unless specifically waived by the Town Board.

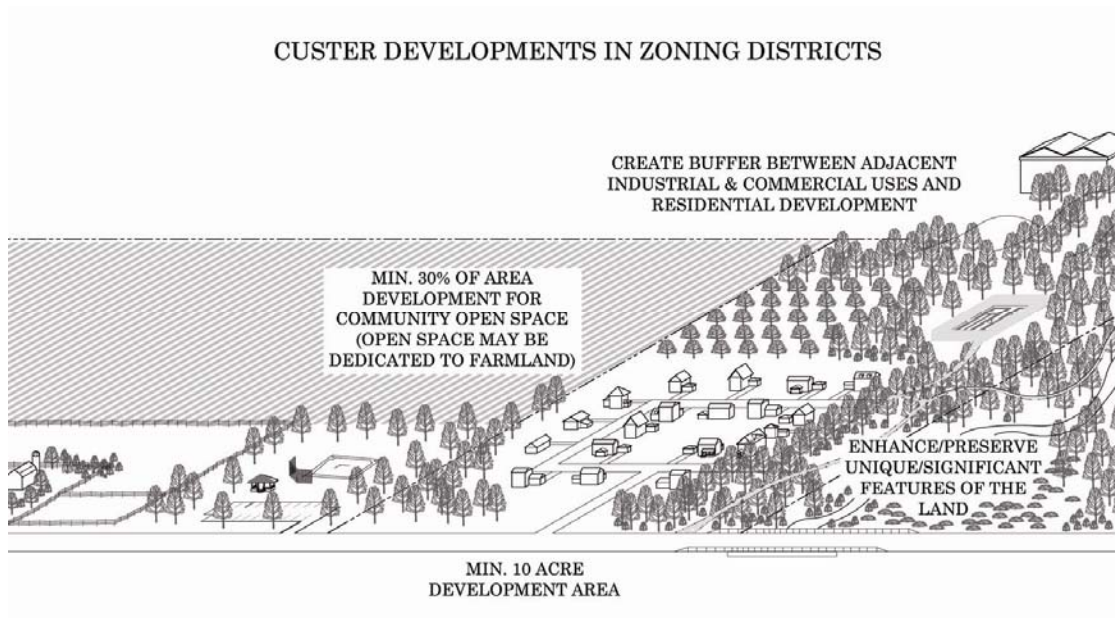
J. Open Space

- (1) In reviewing proposed cluster developments, the Planning Board shall evaluate subdivision layout with respect to scenic views, natural landscape features, topography of the site, woodlands, wetlands, other features of the site and other adjacent areas and shall require development in a fashion and manner which it finds will enhance and preserve such features, including, but not limited to:
  - (a) Lands adjacent to public parks and other publicly accessible open space.
  - (b) Lands adjacent to other dedicated open space areas on adjacent parcels.

- (c) Buffer lands between adjacent active agricultural uses, industrial uses, commercial uses and residential development.
- (d) Lands adjacent to important streams, rivers and creeks.
- (2) The Planning Board may require additional amenities, enhancement of, changes to configuration of and location of open space, to enhance the benefits to the residents and/or the Town derived from the cluster development. Failure or refusal to include such requirements shall result in disapproval of the proposed plan.
- (3) The community open spaces shall be clearly depicted upon the subdivision plan and shall be provided in as large a contiguous land area as possible. The developer shall illustrate on the subdivision plan all improvements to the community open space, including trails, landscaping, incorporation of natural features, recreational facilities, structures, including clubhouses, pools, tennis courts, etc.
- (4) As part of the preliminary plan, the developer shall specify the type of development (condominium, townhouse, landowner's association, etc.) and shall offer basic regulations which will be incorporated into the open space plan.
- (5) At the time of final subdivision approval, the developer shall include a draft of the homeowners' association, condominium offering, or other method utilized to preserve the community open space. Said documents shall clearly provide for a means to fund and preserve the common areas in the intended fashion. Any final approval shall be conditioned on approval of the documents by the Town Attorney, proper recording, and adequate funding of the legal entity controlling common areas.
- (6) All improvements to the community open spaces required to enhance, preserve and make accessible shall be a condition of approval and shall be completed prior to issuance of any building permits in the development. Where the Planning Board finds it necessary, it shall require the posting of a bond or cash deposit in an amount necessary to assure completion and maintenance until the homeowners' association is sufficiently funded to assure such maintenance

K. Further Restrictions

- (1) The provision of this Section shall not be deemed to authorize a change in the permissible use of such lands as provided elsewhere in the Zoning Law of the Town of Porter applicable to such lands.
- (2) Nothing herein shall supersede any requirements of the subdivision regulations in effect, which may impose additional requirements upon the developer for approval of the proposed subdivision.
- (3) Further subdivision of an approved cluster development shall not be allowed. This shall be indicated on the final subdivision plat and recorded with Niagara County.



§ 22 Reserved

§ 23 Reserved



## Article IV. Additional Requirements for Specified Uses

### § 24 Purpose

The Additional Requirements for Specified Uses place restrictions on specific uses, both permitted and Special Permitted, because of the potential impacts on surrounding properties. These restrictions are applied to a project to mitigate impacts including noise, off-site parking, traffic and unsightliness, odors, dust and fumes. The regulations promote the public health and general safety and neighborhood character of the immediate neighborhood and the entire Town of Porter community.

### § 25 Accessory Uses or Structures

Customary accessory uses and structures other than those mentioned elsewhere in this Law may be permitted provided the following.

- A. No accessory structure may be built without a principal or primary structure on the lot.
- B. All detached accessory structures shall be set back behind the front line of the principal structure.
  - (1) For corner lots, the front line of the principal building shall be determined along both street frontages regardless of orientation of the structure.
  - (2) For lots adjacent to the lake, the front building line shall be determined by the Zoning/Code Enforcement Officer based on the orientation of the dwelling. In some cases, and upon approval of the Code Enforcement Officer, accessory structures may be placed in either or both yards depending on the type of structure or use. However, no accessory structure shall obstruct the view of the lake.
- C. Accessory structures, 10 feet or less in height and wholly within the rear yard, shall be located a minimum of 5 feet from any side or rear lot line; otherwise the setbacks of the district shall apply.
- D. Accessory structures shall be separated from the primary structure a minimum of 10 feet.
- E. Except for agricultural uses, the accessory structure shall not be larger than the primary structure in square footage.
- F. The accessory use or structure is determined by the Zoning/Code Enforcement Officer to have no detrimental effect upon the health, safety and general welfare of the surrounding neighborhood and the community as a whole.

## § 26 Adult Oriented Establishment

### A. Purpose

- (1) It is recognized that buildings and establishments operated as adult uses have serious objectionable operational characteristics. In order to promote the health, safety and general welfare of the residents of the Town, this Section is intended to restrict adult uses to industrially zoned areas of the town.
- (2) The Town Board hereby finds that the operational characteristics of adult uses and the secondary effects of adult uses increase the detrimental impact on a community when such uses are spread throughout the community.
- (3) The Town Board finds that, based upon common knowledge and experience and studies conducted by other municipalities (including but not limited to Syracuse, New York; Bergen, New York; Scotia, New York; Dryden, New York; and Ellicottville, New York), the adult uses sought to be regulated by this Section have been associated with criminal and other socially undesirable behavior, such as disorderly conduct, prostitution, pornography, drug trafficking and substance abuse, which have the resulting effects of depressing property values in the surrounding neighborhood and increasing the burden upon law enforcement personnel and municipal expenditures.
- (4) Therefore, this Section is intended to promote the health, safety and general welfare of the residents of the Town by regulating the concentration and location of such adult uses.
- (5) This Section has neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including sexually oriented materials.
- (6) Neither is it the intent nor effect of this Section to condone or legitimize the distribution of obscene material.

### B. Requirements:

- (1) Materials or merchandise of any kind offered for sale, rent, lease or loan or for view upon the premises of an adult-oriented establishment shall not be visible from outside of a building or structure.
- (2) An adult-oriented establishment shall not be located within 1,000 feet of any other adult-oriented establishment.
- (3) An adult-oriented establishment shall not be located within 1,000 feet of a residential district.
- (4) An adult-oriented establishment shall not be located within 1,000 feet of any parcel of land or lot, which contains any one (1) or more of the following specified protected land uses:
  - (a) Public or Private Elementary or Secondary Schools;
  - (b) Public Parks and Playgrounds;
  - (c) Places of Worship;
  - (d) Public Libraries.

**§ 27 Animal Day Care, Kennel or Shelter**

Animal Day Care, Kennel or Shelter shall be subject to the following requirements:

- A. Minimum lot size shall be five (5) acres.
- B. Shelters for animals within kennels shall not be closer than 100 feet to any lot line.
- C. No outdoor area enclosed by fences for the use of animals shall be permitted within the front yard or within 50 feet of any side or rear property line.

**§ 28 Bed And Breakfast**

Bed and breakfast shall be subject to the following requirements:

- A. The proprietor of the business shall live on-premises of the bed and breakfast establishment.
- B. No alteration to either the exterior or the interior of any principal or accessory structure shall be made which changes the character or appearance from that of a residential dwelling.
- C. One (1) attached or detached sign of not more than two (2) square feet in area shall be permitted.
- D. Bed & Breakfast Establishments are subject to approval by the Niagara County Department of Health.

**§ 29 Camping Grounds**

Camping grounds shall be subject to the following requirements:

- A. No permanent external appurtenances such as carports, cabanas or patios may be attached to any travel trailer or other vehicular accommodation parked in a camping ground, and the removal of wheels and placement of a unit on a foundation in a camping ground is prohibited.
- B. The minimum site area for a camping ground is 20 acres.
- C. No more than a total of ten (10) travel trailers, campers, tents, recreational vehicles or motor homes shall be permitted per acre of gross site area.
- D. Conditions of soil, groundwater, drainage and topography shall not create hazards to the property or safety and health of the occupants.
- E. Uses and structures customarily incidental to the operation of camping grounds, such as headquarters, toilets, dumping stations and showers are permitted as accessory uses to the camping grounds.
- F. Convenience establishments shall be permitted as accessory uses in camping grounds in such districts where they are not allowed as principal uses, subject to the following restrictions:
  - (1) Such establishments and the parking area primarily related to their operations shall not occupy more than 5% of the gross area of the camping ground.
  - (2) Such establishments shall be restricted in their use to occupants of the camping ground.

- (3) Such establishments shall present no visible evidence from any street outside the camping ground of their commercial character, which would attract customers other than occupants of the camping ground.
- G. A minimum of 10% of the gross site area for the camping ground shall be set aside and developed as common use areas for open or enclosed recreation facilities. No travel trailer site, required buffer strip, street right-of-way, storage area or utility site shall be counted as meeting recreational purposes.
- H. Quiet hours shall be maintained between 11:00 p.m. and 8:00 a.m.
- I. Entrances and exits to camping grounds shall be designed for safe and convenient movement of traffic into and out of the camping ground and to minimize friction with movement of traffic on adjacent streets. All traffic into or out of the camping ground shall be through such entrances and exits. No entrance or exit shall require a turn at an acute angle for vehicles moving in the direction intended, and radii of curbs and pavements at intersections shall be such as to facilitate easy turning movements for vehicles with trailers attached.
- J. All utilities shall be underground.
- K. No camp structure, except fences, gates and permitted signs shall be located within 300 feet of any street or property line.

**§ 30 Car Washes**

Car washes shall be subject to the following requirements:

- A. All washing and machine-drying operations shall be conducted within a building.
- B. All run-off from the car wash operation shall empty into the sewer system or in a self-contained storage system prior to waste removal.
- C. The building exit for automobiles that have completed the washing and machine drying process shall be set back a minimum of 50 feet from the nearest point of any street property line.
- D. Washing, vacuuming, steam cleaning, waxing, polishing or machine drying operations, and any building within which such operations are conducted shall be located a minimum of 50 feet from a Residential District.
- E. All lot lines abutting or adjacent to Residential Districts or uses shall have a ten (10) foot wide buffer area in accordance with § 73 of this Law.
- F. Perimeter landscaped open space shall be provided in the front yard.
- G. All entrance and exit lanes and parking areas shall be surfaced so as to provide a durable and dustless surface, and shall be so graded and drained as to dispose of all surface water and runoff from the car wash operation into a sanitary sewer.

## § 31 Communications Structures/Facilities

### A. Purpose

The purpose of this Section is to provide sound land use policies, procedures and regulations for communications facilities. These will protect the Town from the visual or other adverse impacts of these facilities, while encouraging unobtrusive development that ensures comprehensive wireless telecommunications services. The standards reflect a policy that expresses a preference that antennas be located on existing buildings and towers rather than on newly constructed towers.

### B. Collocation

- (1) The shared use of existing communications facilities or other structures shall be preferred to the construction of new facilities. Any special use permit application, renewal or modification thereof shall include proof that reasonable efforts have been made to collocate within (share) an existing communications facility or upon an existing structure. The application shall include an adequate inventory report specifying existing communications facility sites and structures exceeding 75% of the height of the proposed tower within the search range of the cell grid. The inventory report shall contain an evaluation of opportunities for shared use as an alternative to the proposed location.
- (2) The applicant must demonstrate that the proposed communications facility cannot be accommodated on existing communications facility sites in the inventory due to one (1) or more of the following reasons:
  - (a) The planned equipment would exceed the structural capacity of existing and approved communications facilities or other structures, considering existing and planned use for those facilities;
  - (b) The planned equipment would cause radio frequency interference with other existing or planned equipment, which cannot be reasonably prevented;
  - (c) Existing or approved communications facilities or other structures do not have space on which proposed equipment can be placed so it can function effectively and reasonably;
  - (d) Other technical reasons make it impracticable to place the equipment proposed by the applicant on existing facilities or structures;
  - (e) The property owner or owner of the existing communications facility or other structure refuses to allow such collocation.
  - (f) The cost from fees and/or adaptation of an existing structure is unreasonable. Costs exceeding a new communications tower construction and the cost of ground rental or acquisition are presumed unreasonable.

### C. Design Standards

- (1) Building mounted communications structures shall not be located on any residential building.
- (2) Building mounted communications structures shall be permitted to exceed the height limitations of the applicable zoning district by a maximum of 20 feet.
- (3) Building mounted communication structures shall be integrated in a manner that blends with the existing architectural characteristics of the building.

- (4) Communications towers shall be designed to provide for collocation by at least two (2) providers or designed so that they can be retrofitted to accommodate at least two (2) providers.
- (5) Communications towers shall be a maximum 100 feet in height.
- (6) Communications towers shall be located a minimum distance from the base to the property line of 110% of the structure's height.
- (7) Communications towers shall be designed and constructed to all applicable standards of the American National Standards Institute (ANSI/EIA-222-E) Manual as amended. Towers and antennae shall be designed to withstand wind gusts of at least 100 miles per hour.
- (8) Communications towers shall either be gray in color, have a galvanized finish or be colored appropriate to the tower's locational context to the extent that the tower is as unobtrusive as possible, unless otherwise required by the Federal Aviation Administration (FAA)
- (9) Communications towers shall be sited so as to minimize visual impact on the environment and adjacent properties.
- (10) Communications towers shall not be artificially lighted and marked beyond requirements of the Federal Aviation Administration (FAA).
- (11) The base area of a tower shall be enclosed with a fence not less than six (6) feet in height.
- (12) Climbing access to the tower shall be limited by limiting tower climbing apparatus to no lower than 12 feet from the ground.
- (13) A minimum of 40 feet buffer shall be required between communication facilities and any adjacent lots. Landscaping shall be provided along the perimeter of the tower base area to provide a visual screen or buffer for adjoining private properties and the public right-of-way. Required front yard setback areas shall be landscaped.
- (14) Signs shall not be permitted on towers except for signs displaying owner contact information and safety instructions. Such signs shall not exceed five (5) square feet in surface area.
- (15) Any utilities serving the site, if any, shall be placed underground.

D. Discontinuance of Use

- (1) If the use of any facility is discontinued, the provider shall notify the Zoning/Code Enforcement Officer within 90 days of such discontinuance.
- (2) If the facility will be retained, the provider shall establish that the facility will be reused, and all necessary approvals obtained, within one (1) year of such discontinuance.
- (3) If a facility is not reused within one (1) year, a demolition permit shall be obtained and the facility removed within one (1) year of the abandonment, obsolescence or cessation of use.
- (4) If the facility is not removed within the time period, the Town shall have the authority to remove the facility at the cost to the owner.

- (5) A surety bond, approved by the Town Attorney, in the amount of \$50,000 shall be issued by the applicant and held by the Town of Porter to insure that the removal of the facility is executed.

E. Additional Submittal Requirements

In addition to all requirements outlined in this Chapter, all applicants for approval for a communications facility (tower, antenna, telecommunications equipment building and other related structure or use) shall submit:

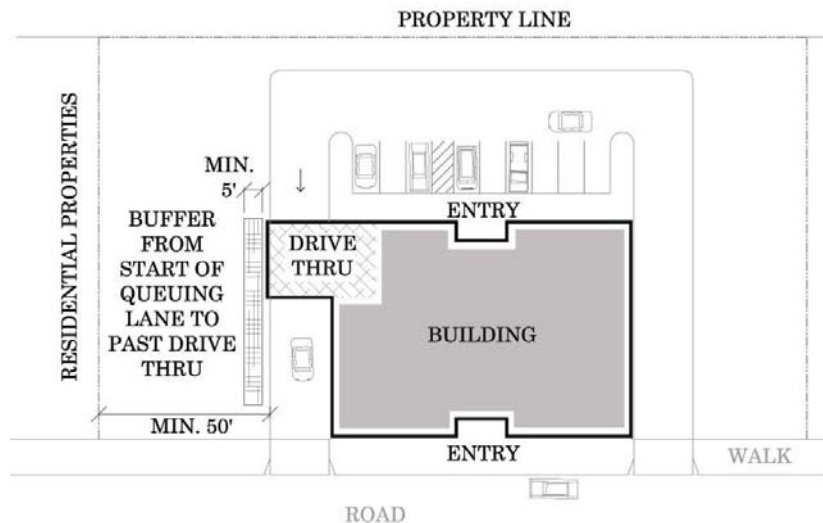
- (1) A statement from the FAA that the application has not been found to be a hazard to air navigation under Part 77, Federal Aviation Regulations, or a statement that no compliance with Part 77 is required.
- (2) A statement from the FCC that the application complies with the regulations of the Commission or a statement that no such compliance is necessary.
- (3) Visual impact analysis.
  - (a) The applicant shall be required to undertake a visual impact analysis on any proposed commercial communications tower or any proposed modification to an existing tower which causes said tower to exceed 30 feet in height from its original permitted height. The visual impact analysis, in the form of a written report, shall assess the cumulative impacts of the proposed facility and other existing and foreseeable commercial communications towers in the area and shall identify and include all feasible mitigation measures necessary to mitigate any negative visual impact by the proposed tower. Mitigation measures should be consistent with the technological requirements of the applicant.
  - (b) The visual impact analysis report shall include but not be limited to the following:
    - (i) A photograph simulation of predevelopment versus post development views from key viewpoints, but from no less than the four (4) sides.
    - (ii) An analysis of possible alternative tower structure designs and color schemes.
    - (iii) An analysis of the visual impact of the tower base, accessory buildings and overhead utility lines from abutting properties and streets.
- (4) A report by a certified engineer documenting the following:
  - (a) Communication tower height and design, including technical, engineering, economic and other pertinent factors governing selection of the proposed design;
  - (b) A cross section of the communications tower;
  - (c) Total anticipated capacity of the site including number and types of antennas, which can be accommodated;
  - (d) Evidence of structural integrity of the tower structure;
  - (e) Failure characteristics of the communication tower and demonstration that the site and setbacks are of adequate size to accommodate debris;

- (f) Ice hazards and mitigation measures which have been employed, including, but not limited to, increased setbacks and/or deicing equipment;
  - (g) Specific design and construction plans indicating the means by which shared use requirements will be met.
- (5) Applicant's letter of intent to lease excess space on the tower in conformance with the provisions for shared use contained in this Section.

## § 32 Drive-thru Facilities

Drive-thru facilities shall be subject to the following requirements:

- A. Drive-thru facilities shall be prohibited in the front yard
- B. Drive-thru facilities shall be located to preserve continuous vehicular and pedestrian access from the public right-of-way to the principal building entry.
- C. Drive-thru facilities and stacking lanes shall be a minimum of 50 feet from the property line of adjacent residential properties.
- D. A five (5) foot wide buffer shall be provided along the drive-thru lane from the beginning of the stacking lane to the drive-thru window.



## § 33 Farm Ponds

Farm Ponds are permitted in the AG District provided the following

- A. Permit Requirements
  - (1) A building permit is required before excavation may begin.
  - (2) Before a building permit will be issued, the applicant must obtain all required permits from the Department of Environmental Conservation and the Niagara County Soil and Water Conservation Agency.



- (3) The Applicant can demonstrate a legitimate farming need for the farm pond before obtaining a building permit. The legitimate farming need and adequate size of the farm pond to fulfill the farming need shall be determined by the Niagara County Soil and Water Conservation Agency. The Niagara County Soil and Water Conservation Agency may also determine that the amount of soil to be removed exceeds 750 cubic yards and therefore requires a mining permit from the Department of Environmental Conservation.
- (4) The farm pond shall be completed within one (1) year of obtaining a building permit.

B. Proof of Insurance

The applicant shall file proof of adequate insurance for any and all damages, including physical injury, property damage, or any other injury suffered by any member of the public during the course of construction of the farm pond having policy limits of at least one (1) million dollars. This provision shall be waived upon the satisfactory completion of the farm pond as determined by the Zoning/Code Enforcement Officer.

C. Excavation Fees

- (1) It is the intent of this Section for the Town to recover the engineering cost associated with monitoring construction and final inspection of a farm pond.
- (2) In lieu of fee otherwise collected for major excavations as permitted by local law and in furtherance of accommodations being made to exempt farm ponds from bonding requirements and tipping fees, the applicant is required to pay a fee per acre to be excavated, in accordance with the fee schedule, in the construction of a farm pond as designed by Niagara County Soil & Water Conservation Agency.
- (3) All excavation fees shall be placed in an interest-bearing escrow account, out of which all Town inspections, engineering fees, survey costs, highway maintenance, lawyer fees and other cost incurred by the Town in connection with the project shall be paid.
- (4) Upon satisfactory completion of the farm pond, the Town engineer shall issue a preliminary certificate that the farm pond has been properly constructed and a final inspection of the farm pond shall be made one (1) year and 90 days following the issuance of the preliminary certificate. If, following the final inspection, the integrity of the farm pond has been maintained, the remaining escrow balance, if any, shall be returned to the permittee, along with an accounting of all expenses. Any repairs to the farm pond deemed necessary by the Town Engineer, shall be undertaken and completed before the return of any escrow balance.

D. Water Emergencies and Droughts

The applicant shall be restricted from the use of public water for irrigation purposes related to the agricultural areas which have been designated to be serviced by the construction of the farm pond as designated by the Niagara County Soil & Water Conservation District during drought or other water emergency as determined by the Town Zoning/Code Enforcement Officer. Any violation of this requirement shall be enforced as prescribed by this Law.

**§ 34 Firewood**

The storage of firewood for personal use is permitted in all districts and as an agricultural product for sale in the Rural Agricultural District provided the following:

- A. Firewood shall be neatly stacked and reasonably secured.
- B. Firewood shall not be stored in a front yard
- C. A no-fee permit is required for the sale of firewood. The sale of firewood as an agricultural product in an Agricultural District or an existing farm protected by Niagara County Right to Farm Law is exempt from this provision.
- D. Stacks of firewood shall be dismantled and removed from a premise if it is found to harbor rodents, pests, or any other reason which may endanger the health, safety, and general welfare of nearby residents.

**§ 35 Home Occupations**

Home occupations shall be subject to the following requirements:

- A. A home occupation shall be conducted entirely within a dwelling or existing accessory structure
- B. The home occupation is clearly incidental and secondary to the principal use of the dwelling. Suitable home occupations include, but are not limited to: office for professional (architect, attorney, accountant, etc.); instructors limited to one or two students at a time; barber limited to one chair; hairdresser limited to two chairs; computer technician.
- C. The establishment of a home occupation shall not change the principal character or use of the dwelling unit involved.
- D. A maximum of one (1) person other than members of the immediate family residing on the premises may be employed.
- E. A maximum of 25% of the floor area of one (1) story shall be devoted to the home occupation. This requirement shall not apply to family day care homes.
- F. A home occupation shall not require internal or external alteration or invoke construction features not customarily in a dwelling.
- G. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street.
- H. Storage or display of materials, goods, supplies or equipment related to operation of a home occupation shall not be visible from outside the dwelling.
- I. Mechanical, electrical or other equipment, which produces noise, electrical or magnetic interference, vibration, heat, glare or other nuisance outside the residential or accessory structure, shall not be used.
- J. A home occupation shall not be permitted which is noxious, offensive or hazardous by reason of hours of operation, vehicular traffic, generation or emission of noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare, refuse, radiation or other objectionable emissions.
- K. A home occupation shall not involve the use of advertising signs. Only one (1) non-illuminated nameplate, not to exceed one (1) foot by two (2) feet shall be allowed. It may display the name of the occupant and/or the name of the home occupation.

**§ 36 Hunting Clubs**

Hunting Clubs shall be subject to the following requirements:

- A. Minimum lot size shall be 100 acres.

**§ 37 Junkyards or Salvage Yards**

Junkyards and Salvage Yards shall be subject to the following requirements:

- A. Junkyards shall be located at least 1,000 feet from any Residential District.
- B. All junkyard materials and activities not within completely enclosed buildings shall be surrounded by a solid stable fence or wall of acceptable design to be at least eight (8) feet in height, surfaced so as to be resistant to damage from the elements and from stored materials and erected and maintained in a manner to provide effective screening of the premises. The enclosure setback shall also be at least 50 feet from any adjoining property line.
- C. Storage piles shall not exceed the height of the fence surrounding the materials.
- D. No junk yard shall be operated or used in such a manner so as to create a nuisance by reason of noise, disagreeable odors, fumes, filth or loose debris.
- E. The junk yard shall not be operated so that the air of any property owner in the vicinity is polluted by the burning of rubber or other substances.
- F. An application for an annual license or the renewal shall be filed with the Town Clerk and shall be accompanied by initial application and renewal fees as set from time to time by resolution of the Town Board.
- G. Before a junkyard license shall be issued, there must be a favorable recommendation by a majority of the Town Board, and the premises must be inspected by each of the members of the Town Board, or their duly authorized representatives, and certified by them as complying with all of the provisions of this chapter and all other applicable ordinances of the Town of Porter.

**§ 38 Keeping of Animals**

- A. Purpose

It is the purpose of this Section to establish regulations for the keeping of animals in order to protect adjoining properties and neighborhoods from adverse impacts of such facilities and to protect the safety and well-being of the public and of the animals maintained in such facilities.

- B. Farm Animals

- (1) No building in which farm animals or poultry are housed shall be located within 100 feet of any lot line.
- (2) There shall be no storage of manure or other odor or dust producing substance within 150 feet of any lot line, stream or other water body or less than 300 feet from the nearest neighboring residential structure. Manure Lagoons, as defined under this Zoning Ordinance, are subject to separate regulations as outlined in §40 of this Zoning Law.
- (3) No swine shall be kept within 500 feet of any adjoining residence or within 200 feet of any lot line.

- (4) A stable, barn, or other such structure shall be maintained for the keeping of livestock in such manner that they may be completely enclosed and protected.
- (5) Commercial Stables shall be subject to the following additional regulations:
  - (a) The minimum lot size shall be 10 contiguous acres.
  - (b) The maximum number of horses allowed shall be one (1) horse per acre for the first 20 acres, plus one horse for each additional ½ acre.
  - (c) Any riding ring or exercise track shall be at least 100 feet from any lot line.
  - (d) Fencing of at least five feet in height, and sufficient to provide containment, shall enclose any paddock and be no closer than 50 feet to any lot line.
  - (e) Suitable and adequate off-street parking in accordance with the reasonable requirements of the Planning Board shall be provided.
  - (f) The maintenance of the structures and hygiene conditions connected with the use herein permitted shall be under the supervision of the Town and the Niagara County Health Department.
- (6) Horses, cattle, hogs, fur-bearing animals, fowl, or other farm animals shall not be harbored in any residential district except where such plot qualifies as a farm in a County adopted, State certified Agricultural District, on an existing farm protected by Niagara County Right-to-Farm Law, or as following permitted:
  - (a) The stabling of horses for private use shall be permitted as an accessory use subject to the following regulations:
    - (i) The minimum lot size shall be five (5) contiguous acres.
    - (ii) The maximum number of horses allowed shall be two (2) horses for the first five (5) acres, plus one horse for each additional acre.
    - (iii) Any structure or building for the stabling of horses shall be no closer than 100 feet to any lot line.
    - (iv) There shall be no storage of manure or other odor or dust producing substance within 150 feet of any lot line.
    - (v) Fencing of at least five (5) feet in height, and sufficient to provide containment, shall enclose any paddock area and be no closer than 15 feet to any lot line.
    - (vi) No retail or commercial activity shall take place, including a riding academy.
  - (b) The keeping of fowl, rabbits and similar small animals shall be permitted subject to the following regulations:
    - (i) The minimum lot size shall be 2 acres.
    - (ii) The total number of animals or fowl harbored shall not exceed ten (10) small animals such as rabbits or mink, adult or fully grown chickens, ducks, geese or other fowl or birds of any type or any combination thereof for every two (2) acres of land up to a total of thirty (30) such animals or fowl.

- (iii) Building and maintenance areas shall be no closer than 50 feet to any lot line.
- (iv) Building and maintenance areas shall be kept clean and any waste disposed of in a manner that does not create a nuisance or health hazard.
- (v) The Planning Board may issue a special use permit for the keeping of small animals in a number that exceeds the thirty allowed by this regulation provided:
  - [a]. The applicant can meet the minimum acreage requirement of 2 acres for every ten (10) such animals or fowl.
  - [b]. The Board considers the factors outlined below in B6(c)-(ii), (iii), and (iv) of this Section.
- (c) The keeping of a cow, sheep, goat, or other four-legged domestic-type farm animal, shall not be permitted in any lot in any residential district in the Town unless application is made to and a special use permit is granted by the Planning Board. The Board may consider, where it is material in each case and among the other relevant factors, the following:
  - (i) The minimum lot size shall be three (3) acres. (No such application shall be considered for a lot of less than three acres)
  - (ii) Noise or offensive emission of odors or fumes.
  - (iii) Any detriment to the health, safety, or general welfare of the community.
  - (iv) Whether such use is appropriate to the particular location.
- C. Notwithstanding the foregoing, nothing herein contained shall prohibit the raising or harboring of domestic animals or poultry on an existing farm protected by Niagara County Right-to-Farm Law or any plot of land that qualifies as a farm in a County adopted, State certified Agricultural District.
- D. Common household pets are exempt from these provisions.

### **§ 39 Manufactured Homes**

Manufactured homes shall be allowed in any district where single family homes are allowed only on a single building lot as a permanent single-family dwelling if the following conditions are met:

- A. The minimum building width shall be 24 feet.
- B. Minimum floor area requirements for single-family homes, as provided in §68 of this Law, must be met.
- C. The minimum roof pitch shall be 4:12.

**§ 40 Manure Lagoons**

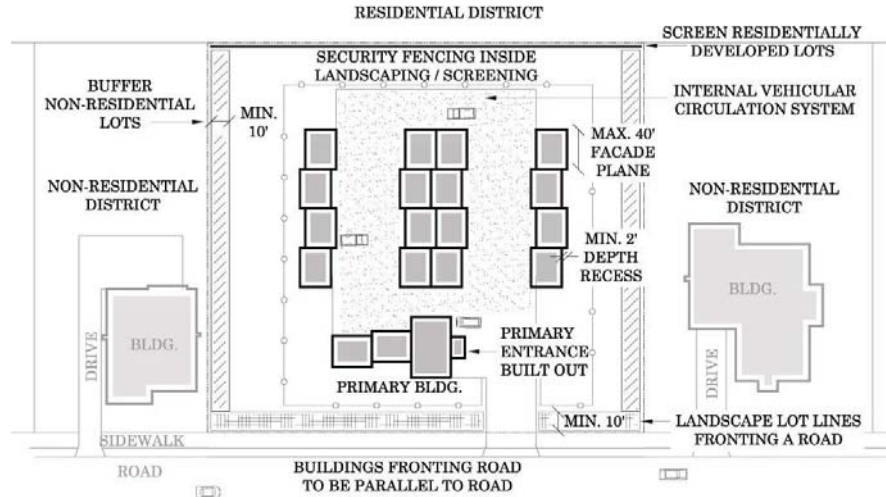
Manure Lagoons or storage areas shall be subject to the following requirements:

- A. Manure lagoons must comply with all DEC Guidelines and Regulations for nutrient standards and will be regulated in accordance with NYS Agriculture and Markets Law” wherever appropriate.
- B. A copy of the CAFO (Contained Animal Feed Operation) plan, required by the DEC, shall be submitted to the Town for review.
- C. Manure lagoons shall be setback 150 feet from any property line and 500 feet from any residence on adjacent lots.
- D. Manure lagoons shall be located a minimum 300 feet from any well on the same or adjacent lots.
- E. The bottom of a manure lagoon shall be located a minimum of two (2) feet above the high water table.
- F. Manure lagoons shall be lined with an impermeable lining so as to prevent seepage into ground water.
- G. Manure lagoons shall be approved by the Niagara County Soil and Water Conservation District as well as approval from any other agency as determined by the Niagara County Soil and Water Conservation District.

**§ 41 Mini Storage Facility**

Mini Storage Facilities shall be subject to the following requirements:

- A. If more than one (1) building, buildings shall be connected with an internal vehicular circulation system.
- B. Buildings fronting a road shall be parallel to the road.
- C. The maximum length of a building façade plane shall be 40 feet. Change in façade plane shall be a minimum two (2) feet.
- D. The exterior finish materials on all facades shall be limited to stone, brick, vinyl siding, steel siding, light-weight cementitious siding, shingles and/or exterior insulation finish system.
- E. All pedestrian entrances shall be illuminated.
- F. Buildings shall have a pitched roof or the appearance of a pitched roof.
- G. Screening shall be provided along all lot lines abutting or adjacent to residentially developed property.
- H. A minimum ten (10) foot wide buffer shall be provided along all lot lines adjacent to a non-residential use.
- I. A minimum ten (10) foot wide landscaped area shall be provided along all lot lines fronting on a road.
- J. Security fencing used to protect the facility shall be located on the inside of the landscaping.



#### § 42 Mobile Home

A mobile home shall not be parked on any lot within the Town of Porter except for the following.

- A. In a mobile home park pursuant to the regulations contained in §43 of this Law
- B. On a farm located in an agricultural district or on a farm of not less than 80 acres for the occupancy by seasonal farm labor employed primarily on the premises.
- C. On an applicant's property during period of construction of a residence on the same property by the applicant.

#### § 43 Mobile Home Parks

Mobile Home Parks shall be subject to the following requirements:

##### A. Lot Requirements

- (1) A mobile home park shall have a minimum area of 50 acres.
- (2) A mobile home or trailer lot, office or service building shall be set back a minimum of 50 feet from all property lines.
- (3) A 20 foot wide buffer pursuant to §73 of this Law shall be provided along all property lines.
- (4) Each mobile home park shall include a minimum of 20% open space; this shall include common areas, parks, playgrounds and other amenities that can be used by the residents of the park.
- (5) All utilities shall be located underground.

##### B. Interior Roads

- (1) All interior roads shall be a minimum 40 feet wide, with 20 feet paved and with a minimum depth, including foundation of 12 inches. The layout of streets within a mobile home park shall not be a gridiron pattern of identical rectangles.
- (2) Appropriate street lighting shall be installed on interior streets with the minimum number of lights being one (1) at each intersection of interior streets and at least every 200 feet where intersection are more than 300 feet apart.

C. Individual lots

- (1) Individual mobile home lots shall have an area of not less than 8,125 square feet with a minimum width of 65 feet and a minimum depth of 125 feet.
- (2) Individual mobile home shall be a minimum of 40 feet from another mobile home
- (3) Mobile homes shall be set back 20 feet from interior roads
- (4) A maximum of one (1) accessory structure which is consistent with the design of the mobile home and no larger than 80 square feet shall be erected on an individual site.
- (5) Each site shall be provided with approved connection for water, gas, sewer, electricity, and telephone. Approval of sanitary sewer and water must be obtained from the Niagara County Department of Health prior to approval.
- (6) A surfaced parking pad shall be provided on each site for a mobile home and two (2) vehicles.
- (7) At least one (1) shade tree with a minimum diameter of one (1) inch measured at one (1) foot from ground level shall be planted at every site.
- (8) Any fuel oil tank supplying a mobile home shall be screened from view by a permanent structure. Such tank shall be mounted on an incombustible support a minimum of five (5) feet from any exit.
- (9) The area under a mobile home shall be enclosed with a skirt.

D. Service Buildings

- (1) Service building housing sanitation, laundry or other facilities shall be permanent structures complying with all building codes.
- (2) Service buildings shall be well lit at all times of the day and night.
- (3) Service building shall be maintained at a temperature of 68 degrees Fahrenheit from October 1<sup>st</sup> to May 1<sup>st</sup>.

E. Refuse disposal

- (1) Each site shall be provided with at least one (1) twenty gallon garbage can with tight fitting cover.
- (2) Garbage cans shall be kept in sanitary condition at all times.
- (3) It shall be the responsibility of the mobile home park operator to ensure that garbage and refuse is collected and properly disposed of outside the park as frequently as may be necessary to ensure that garbage cans do not overflow.
- (4) Exterior areas shall be free from organic and inorganic materials that might become a health, accident, or fire hazard.
- (5) The entire park shall be continuously policed to preclude the accumulation of litter, trash, discarded items, or other debris.

F. Maintenance

- (1) Provisions shall be made for the regular and continuous maintenance of landscaping which is required as a condition of initial approval
- (2) Snow and ice shall be promptly removed from interior roadways and sidewalks to provide for convenient and safe automobile and pedestrian travel.



**§ 44 Outdoor Displays**

Outdoor displays shall be allowed in the commercial districts subject to the following requirements:

- A. Outdoor displays shall be allowed adjacent to a principal building wall and extending to a distance no greater than five (5) feet from the wall.
- B. Outdoor displays shall not be permitted to block windows, entrances or exits, and shall not impair the ability of pedestrians to use the building.
- C. Outdoor displays shall be temporary or seasonal in nature.

**§ 45 Outdoor Material Storage**

Where permitted, outdoor material storage shall be subject to the following:

- A. Outdoor material storage shall not be allowed in the front yard.
- B. Outdoor material storage shall not occupy more than 10% of the entire lot area.
- C. All outdoor material storage shall be screened from the public right-of-ways or adjacent residential properties.

**§ 46 Outdoor Wood-burning Furnaces**

- A. Outdoor wood-burning furnaces must be set back a minimum of 100 feet from any property line.
- B. The use of such furnaces must follow all operating instructions supplied by the manufacturer.
- C. The only fuels allowed shall be those listed fuels recommended by the manufacturer. The following are prohibited: trash, plastics, gasoline, rubber, naphtha, household garbage, material treated with petroleum products (particle board, railroad ties and pressure-treated wood), leaves, paper products and cardboard.
- D. Lighter fluids, gasoline or chemicals to start the furnace are prohibited.
- E. The unit must be located with due consideration to the prevailing wind direction.
- F. The stack shall be located according to manufacturer's specification.
- G. New wood-burning furnaces shall have a minimum efficiency rating of .44-pound-per-million-btu
- H. Installation and operation of all Outdoor Wood-burning Furnaces must comply with New York State Regulations.

**§ 47 Place of Worship**

Places of Worship shall be subject to the following requirements:

- A. Minimum lot size shall be two (2) acres.
- B. A 50 foot landscaped area shall be maintained on all sides of the property excluding access drives.

**§ 48 Private Airfields, Landing Strips**

Private Airfields, Landing Strips shall be subject to the following requirements:

- A. The lot shall be a minimum of 60 acres
- B. No commercial flying lessons shall be permitted.
- C. All runways and taxiways shall be a minimum 500 feet from any residentially developed property.

**§ 49 Public Utilities**

Public utilities shall be subject to the following requirements:

- A. Any structure shall be set back not less than 25 feet from all property lines other than the minimum setback requirements of the applicable zoning district, whichever is greater.
- B. The use shall be enclosed by a ten (10) foot wide buffer except where access is necessary.
- C. The outdoor storage of vehicles and equipment on the premises shall be prohibited.

**§ 50 Recreational Ponds**

- A. There shall only be one (1) recreational pond on any parcel.
- B. The parcel shall have a minimum lot size of ten (10) acres and shall have an established dwelling.
- C. A recreational pond shall not exceed one (1) acre.
- D. Excavation and landscaping plans are to be drawn by a licensed engineer and approved by the Town Engineer and Zoning/Code Enforcement Officer. Niagara County Soil and Water Department can be used as a soil resource. A fee, in accordance with the fee schedule, for Town Engineer review is required.
- E. The pond shall be a minimum 100 feet from all lot lines and from the primary dwelling structure.
- F. A minimum of 50 feet around the pond bank shall be mowed yearly.
- G. A pond shall have a minimum slope 3:1.
- H. All soil excavated as a result of pond construction shall be retained on the premises for grading, finished seeding, or other landscaping purposes. Any mound created as a result of excavation shall be stabilized and maintained. The Town Board must approve any exceptions.
- I. The Town Engineer and Zoning/Code Enforcement Officer can inspect the pond at any time to ensure proper maintenance and pest control. Infractions will be cured within a reasonable time period as determined by the Zoning/Code Enforcement Officer.

**§ 51 Retail Plazas**

Retail plazas shall be permitted in commercial districts subject to the following.

- A. Individual uses within a retail plaza shall not be more than 25,000 square feet.
- B. The entire floor area of all uses within a retail plaza shall not be more than 50,000 square feet.
- C. Retail Plazas shall have a unified architectural style.
- D. Retail plazas shall conform to the design standards of the district in which they are permitted.
- E. Buffering or fencing may be required as determined upon site plan review.
- F. Landscaping as determined upon site plan review.
- G. Parking in the rear is desired.

**§ 52 Solar Collectors**

- A. Rooftop and building-mounted solar collectors are permitted in all zoning districts in the Town subject to the following requirements.

- (1) Building permits shall be required for installation of rooftop and building-mounted solar collectors.
  - (2) Rooftop and building-mounted solar collectors shall not be more than three (3) feet higher than the finished roof to which it is mounted. In no instance shall any part of the system extend beyond the edge of the roof.

- B. Ground-mounted and freestanding solar collectors are permitted as accessory structures in all zoning districts of the Town, subject to the following requirements:

- (1) The location of the solar collector meets all applicable setback requirements of the zone in which it is located.
  - (2) The height of the solar collector and any mounts shall not exceed 20 feet when oriented at maximum tilt.
  - (3) The total surface area of all ground-mounted and freestanding solar collectors on the lot shall not exceed 1,000 square feet.
  - (4) A building permit has been obtained for the solar collector.
  - (5) The solar collector is located in a side or rear yard.

- C. Solar Storage Batteries

When 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

- D. Discontinuance

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 and facilities by no later than 90 days after the end of the 12 month period

## § 53 Swimming Pools

Private swimming pools shall be subject to the following requirements:

### A. Application/permits

- (1) A building permit shall be required for all swimming pools. Building permit application shall be made to the Code Enforcement Officer and shall be accompanied by:
  - (a) A plot plan of the property on which the swimming pool is to be constructed or placed showing the location of the swimming pool in reference to the side line, rear lines, grades, basement and other structures on the property and existing electrical service lines.
  - (b) The pool dimensions and depths.
  - (c) The location and dimensions of the fence and any structures or appurtenances built or that are to be built in conjunction with the swimming pool.
  - (d) The estimated cost of the pool.
  - (e) The location and type of waste disposal and drainage system of the property.
  - (f) The location and source of water supply.
  - (g) The location, size and description of all proposed electrical connections, lighting (both above and below ground) and any pool heating device.
  - (h) Each application shall be accompanied by the required building permit fee.
- (2) A bathhouse, pump house, or any other structure erected in connection with such swimming pool shall require a separate building permit

### B. Location/Use

- (1) The pool shall be used only as an accessory use to a dwelling for the private use of the owner or occupant of such dwelling and their families and guests.
- (2) Swimming pools shall be located in rear yard, but not closer than ten (10) feet to the rear or side property line. In cases where locating a swimming pool in a rear yard is impossible due to the presence of a septic system, a swimming pool may be located in a side yard provided that all setback and fencing requirements are still met.
- (3) Swimming pools shall be located at least 15feet from any house basement for an in ground pool and at least ten (10) feet from any house basement for an aboveground pool
- (4) Aboveground and in-ground pools shall be located at least 20 feet from any active well, septic tank, or leach bed, unless conditions warrant a lessening or increasing of this distance.
- (5) Pools equipped with an integral filtration system and filter pumps or other mechanical devices shall have them be so located and constructed so as not to interfere with the peace, comfort and repose of the occupant of any adjoining

- (6) Pools shall be maintained in a manner sufficient to meet the bacterial standards established by the provisions of the New York State Sanitary Code relating to public swimming pools.

C. Electrical/Plumbing

- (1) All electrical installations in or near swimming pools shall be in strict accord with the National Electrical Code, Article 680. All wiring for such installations shall be underground. All wiring must be inspected by a certified electrical inspection agency and a final certificate of compliance furnished to the Code Enforcement Officer.
- (2) No pool shall be erected within ten (10) feet of existing electrical service lines, nor below electrical power lines.
- (3) No lights shall be erected, operated or maintained in connection with a swimming pool in such a manner as to create an annoyance to surrounding properties. They shall be so designed so as to be directed on the pool or adjacent area and shall not illuminate neighboring premises.
- (4) All plumbing and drainage connected with the installation shall comply with the provisions of the New York State Uniform Fire Prevention Building Code applicable to plumbing.
- (5) No permit shall be issued for such pool unless the applicant can show that there is sufficient water supply to accommodate such pool without detriment to normal water consumption requirements and that all proposed water supply connections are proper and adequate.
- (6) No permit shall be issued for such pool unless the applicant can show that the proposed drainage of such pool is adequate and will not interfere with existing sewerage or drainage facilities, with the property of others or with public highways. Pools may not be drained into septic systems.

D. Fencing

- (1) Every in-ground swimming pool and every above ground swimming pool having all or any section of its exterior wall less than four (4) feet measured in a vertical line from the top of the exterior wall to the ground level, shall be entirely enclosed by a fence.
  - (a) Such enclosure shall have a minimum height of four (4) feet and a maximum height of six (6) feet, have a maximum vertical clearance to grade of two (2) inches and be so constructed as to not shut off light or air to any building
  - (b) Where a picket-type fence is provided, horizontal openings between pickets shall not exceed four (4) inches.
  - (c) Where a chain-link fence is provided, the openings between links shall not exceed 2 3/8 inches.
  - (d) Pickets and chain link twists shall extend above the upper horizontal bar.
  - (e) Enclosure shall be constructed so as not to provide footholds.
  - (f) Enclosures shall be located so as to prohibit permanent structures, equipment or similar objects from being used to climb the barrier.

- (g) Such enclosures shall have railings and posts within the enclosure, which shall be capable of resisting a minimum lateral load of 150 pounds, applied midway between posts and at top of posts, respectively. Enclosure fence material or fabric shall be capable of withstanding a concentrated lateral load of 50 pounds applied anywhere between supports on an area 12 inches square, without failure or permanent deformation.
- (h) Access gates shall be self-closing and self-latching, with the latch handle located within the enclosure and at least 40 inches above grade. In addition, pedestrian gates must open outward away from the pool.
- (2) A wall of a dwelling is permitted to serve as part of the enclosure under the following conditions:
  - (a) Windows in the wall shall have a latching device at least 40 inches above the floor
  - (b) A swinging door in the wall shall be self-closing and self-latching
  - (c) A sliding door in the wall shall have a self latching device.
  - (d) All doors with direct access to the pool through that wall must be equipped with an approved alarm system.
  - (e) A swimming pool equipped with a powered safety cover is exempt from these requirements.
- (3) All gates, openings, doors, etc. shall be kept securely locked with a key, combination or other child proof lock while premises are unsupervised by an adult.
- (4) All swimming pools at least four (4) feet between pool top and adjoining grade shall not require the installation of a fence. However, if any such pool has a side deck with stairs, a ladder attached to a slide or other recreational device, a solitary ladder or any other means of access to the water, such stairs, ladder or other means of access shall be capable of being secured, locked or removed when the pool is not in use, thereby preventing access to the pool. All such stairs, ladders or other means of access after removal, shall be stored in a place to prevent unauthorized use.
- (5) All inflatable pools requiring a building permit shall also require the installation of a fence at least four (4) feet in height.
- (6) Fencing requirements must be maintained concurrent with construction. Temporary fencing which meets the intent of this chapter and is approved by the Code Enforcement Officer may be used during the construct period.

E. Pool Alarms

Every swimming pool must be equipped with an approved pool alarm in accordance with the requirements of the New York State Fire Prevention and Building Code.

F. Hot Tubs/Spas

Fencing and pools alarms are not required in hot tubs and spas equipped with a safety cover classified to reference standard ASTM F1346, entitled *Standard Performance Specification for Safety covers and Labeling Requirements for All Covers for Swimming Pools, spas and Hot Tubs*.

G. Wading Pools

No person shall leave a wading pool uncovered and unattended in such a location or in such a manner as to create a hazard to children living in the neighborhood.

H. Abandonment

In the event that an owner shall abandon an outdoor swimming pool, he shall so notify the Code Enforcement Officer, and shall forthwith fill all voids and depressions and restore the premises to the same grade and condition as before the swimming pool was constructed and shall notify the Code Enforcement Officer when restoration work has been completed.

I. Compliance

No pool shall be used until all compliances to local inspections are approved. Applicants for swimming pool permits shall comply with these regulations and all applicable requirements of the State of New York. Where the regulations of the Town and State are inconsistent, the more restrictive requirements shall govern.

**§ 54 Temporary Uses**

Except as otherwise expressly provided in this Section, temporary uses are permitted in any zoning district subject to the following standards and subject to the issuance of a Temporary Use Permit.

A. Particular Temporary Uses Permitted

Subject to the specific regulations and time limits that follow, and to the other applicable regulations of the district in which the use is permitted, the following temporary uses of land are permitted in the zoning districts herein specified:

(1) Carnival, Circus or Festival

- (a) A carnival or circus may be permitted in any Agricultural, Commercial or Industrial District.
- (b) A carnival or circus may be permitted in Residential District on property owned by any not-for-profit group or organization
- (c) Approval by the Zoning/Code Enforcement Officer shall be based on the adequacy of the parcel size, parking provisions and traffic access and the absence of undue adverse impact on surrounding properties.
- (d) Such use shall be limited to a period not to exceed ten (10) days.
- (e) Such use need not comply with the front yard requirements of this Law except that structures or equipment that might block the view of operators of motor vehicles on the public streets shall not be located within 30 feet of the intersection of the curb-lines of any two (2) streets. In no case shall the use be permitted in the right-of-way.
- (f) Such use need not comply with the maximum height requirements of this Law.

(2) Contractors' Offices, Equipment Sheds and Construction Staging Areas

- (a) Contractors' offices, equipment sheds and construction staging areas containing no sleeping or cooking accommodations may be permitted in any district when accessory to a construction project.

- (b) Temporary storage shall be allowed as an accessory use to the contractor's office or equipment shed.
  - (c) Such use shall be limited to a period not to exceed the duration of one (1) year; after one (1) year, a renewal of the temporary use shall be required.
  - (d) No certificate of occupancy shall be issued until the contractor's offices and equipment are removed from the site.
- (3) Dumpsters

The temporary use of dumpsters during construction or renovations shall be permitted provided the following:

  - (a) There shall be no more than one (1) dumpster per property.
  - (b) A dumpster shall not remain at a property in any zoning district in excess of seven (7) consecutive days, and must not be placed at any one (1) property in any zoning district in excess of 30 days in any calendar year. Dumpsters associated with construction at a site where a building permit has been issued, are permitted for the duration of construction and shall be removed from the site within seven (7) days of the end of construction.
  - (c) Dumpsters associated with the clean-up or restoration of a site following a disaster such as a fire or flooding are permitted for the duration of the remediation of a site and shall be removed from the site within 7 days of the end of the clean-up or restoration.
  - (d) The dumpster shall be set back a minimum of ten (10) feet from all property lines.
  - (e) Dumpsters shall not be allowed to over flow and shall be emptied when their capacity has been reached.
- (4) Garage and Yard Sales
  - (a) No directional or advertising sign associated with the sale shall exceed four (4) square feet in area.
  - (b) No directional or advertising sign shall be displayed more than seven (7) days prior to the sale and each sign shall be removed immediately upon completion of the sale.
- (5) Indoor and Outdoor Art and Craft Shows, Exhibits and Sales
  - (a) Indoor and outdoor art and craft shows, exhibits and sales may be permitted in any Agriculture, Commercial or Industrial District subject to proper approval of the Town, or in any public park in a Residential District.
  - (b) Such use shall be limited to a period not to exceed five (5) days.
- (6) Portable On Demand Storage (PODS) Containers

Portable Storage Structures may be permitted in any zoning district provided the following:

  - (a) There shall be no more than one (1) (PODS) Container per property.



- (b) The (PODS) Container shall be no larger than ten (10) feet wide, 20 feet long and ten (10) feet high.
  - (c) A (PODS) Container shall not remain at a property in any zoning district in excess of 14 consecutive days, and must not be placed at any one (1) property in any zoning district in excess of 30 days in any calendar year.
  - (d) The (PODS) Container shall be set back a minimum of five (5) feet from all property lines.
  - (e) The (PODS) Container shall be set back a minimum of five (5) feet from the nearest wall of a building.
  - (f) (PODS) Containers associated with construction at a site where a building permit has been issued, are permitted for the duration of construction and shall be removed from the site within 14 days of the end of construction.
  - (g) (PODS) Containers associated with the clean-up or restoration of a site following a disaster such as a fire or a flooding are permitted for the duration of the remedial action and shall be removed from the site within 14 days of the end of the clean-up or restoration.
  - (h) Containers associated with the storage of farm equipment shall not be considered as a portable on demand storage container.
- (7) Real Estate Offices
- (a) Real estate offices containing no sleeping or cooking accommodations unless located in a model dwelling unit may be permitted in any district when accessory to a new housing development.
  - (b) Such use shall be limited to the period of the active selling or leasing of dwelling units in such development.
- (8) Roadside Stands
- (a) Roadside Farm Stands shall be permitted without a Temporary Use Permit.
  - (b) Temporary roadside stands are exempted from the yard and setback requirements for the use district in which it is located.
  - (c) No roadside stand shall be located in the right-of-way.
  - (d) Pull-offs shall be provided to allow vehicles to park on areas off the road and right-of-way.
- (9) Seasonal Sales
- (a) Seasonal sales, including, but not limited to, Christmas tree sales, may be permitted in any District when approved by the Zoning/Code Enforcement Officer on the basis of the adequacy of the parcel size, parking provisions and traffic access and the absence of undue adverse impact on other properties in the District. The Planning board may also impose a reasonable time limit depending on the nature of the seasonal sale.

- (b) Display of Christmas trees need not comply with the yard and setback requirements of this Law, except that no tree shall be displayed within 30 feet of the intersection of the curb-lines of any two (2) streets. In no case shall the use be located in the right-of-way.

(10) Other Temporary Uses

- (a) Other temporary uses found by the Zoning/Code Enforcement Officer to comply with the provisions of this Section but in no case shall they exceed a period of 30 days.

B. Parking

Before approving any temporary use, the Zoning/Code Enforcement Officer shall make an assessment of the total number of off-street parking spaces which shall be reasonably required for use, on the basis of the particular use, its intensity, and the availability of other parking facilities in the area, and shall approve such temporary use only if such off-street parking is provided.

C. Hours or Days of Operation

No temporary use shall be operated during any hours or on any days of the week except as are designated by the Zoning/Code Enforcement Officer in the certificate required by this Section on the basis of the nature of the temporary use and the character of the surrounding uses.

**§ 55 Vehicle Rental/Sales Establishments**

Vehicle Rental/Sales Establishments shall be subject to the following requirements:

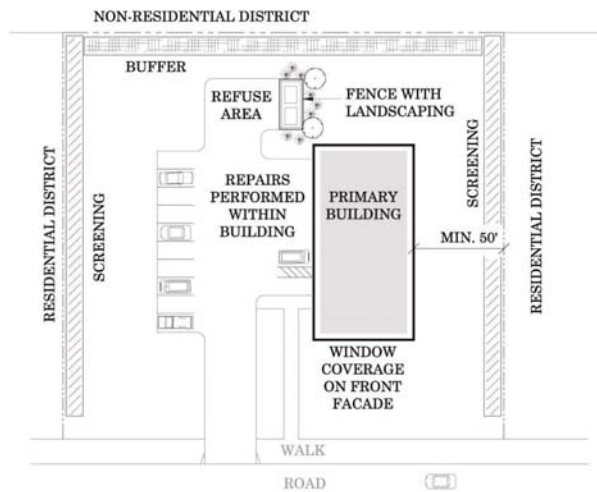
- A. When such use abuts a residential district, special attention shall be made during site plan review regarding a buffer.
- B. Vehicle storage areas shall be surfaced so as to provide an all-weather, durable and dustless surface and shall be graded and drained to dispose of surface water accumulation by means of a positive storm water drainage system connected to an approved wastewater treatment system.
- C. Accessory repairs shall be allowed provided they are performed within the principal building on the premises.
- D. All permanent storage of material, equipment, and merchandise other than vehicles shall be within the principal building, with the exception of refuse and trash which shall be stored in closed containers and in an area screened from view at all points on any public or private property or street when viewed from ground level.
- E. Screening shall be provided along all lot lines abutting or adjacent to residentially zoned or developed property to block any view of repair operations and stored material and equipment from all points on such residential property when viewed from ground level.

**§ 56 Vehicle Repair Stations**

Vehicle Repair Stations shall be subject to the following requirements:

- A. All repairs shall be performed within an enclosed principal building on the premises.
- B. Partially dismantled or wrecked vehicle or any unlicensed vehicle shall be stored in an enclosed building or an area that is sufficiently screened from public view.

- C. All permanent storage of material, merchandise and equipment shall be within the principal building, with the exception of refuse and trash which shall be stored in closed containers and in an area screened from view at all points on any public or private property or street when viewed from ground level.
- D. Sufficient screening shall be provided along all lot lines abutting or adjacent to residentially zoned or developed property to block any view of repair operations and stored material and equipment from all points on such residential property when viewed from ground level.
- E. Accessory sales of vehicles are allowed provided they do not:
  - (1) Constitute more than 25% of the lot size; and
  - (2) Occupy the required parking spaces.



## § 57 Vehicle Service (Fueling) Stations

Vehicle service (fueling) stations shall be subject to the following requirements:

- A. No open-air outdoor storage of materials, merchandise and equipment shall be permitted during non-business hours. Storage of materials, merchandise and equipment during non-business hours shall take place within the principal building or within closed, secure containers such as outdoor storage cabinets.
- B. Refuse and trash may be stored outdoors at all times only if placed in closed containers located in an area screened from view at all points on any public or private property or street when viewed from ground level.
- C. Screening shall be provided along all lot lines abutting or adjacent to residentially zoned or developed property to block any view of service station operations and stored material and equipment from all points on such residential property when viewed from ground level.
- D. In addition to the sign restrictions outlined in §83 of this Law, when calculating signage square footage for service stations, signage shall include all attached and detached signage, window signs, canopy signs and signs on pumps.

## **§ 58 Wind Energy Conversion Systems (Commercial)**

### **A. Finding**

The Town Board of the Town of Porter finds and declares that wind energy is an abundant, renewable and nonpolluting energy resource of the town and that its conversion to electricity will reduce our dependence on nonrenewable energy sources and decrease the air and water pollution that results from the use of conventional energy sources. The Town Board also finds the necessity to regulate siting, installation and operation of Commercial Wind Energy Conversion Systems to protect our natural resources and to protect the health, safety and welfare of adjacent property owners and the general public.

### **B. Site Plan Submission Requirements**

In addition to all other submission requirements contained in §106 of this Law, application for Commercial Wind Energy Conversion Systems (WECS) shall require the following information.

- (1) The make, model, and manufacturer specifications of the proposed WECS.
- (2) A visual environmental assessment form (visual EAF), landscaping plan, and visual assessment report, including appropriate models and photography assessing the visibility from key viewpoints identified in the visual EAF, existing tree lines and proposed elevations. The visual EAF shall include a detailed or photographic simulation showing the site fully developed with all proposed wind turbines and accessory structures. The Planning Board reserves the right to deny any application when it feels that there will be negative impacts on significant scenic views.
- (3) A property value analysis, prepared by a licensed appraiser in accordance with industry standards, regarding the potential impact on values of properties adjoining WECS sites, including properties across public roads from the site.
- (4) Evidence from NYSERDA that the site is feasible for commercial wind energy generation.
- (5) Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
- (6) Utility lines, both above and below ground, within a radius equal to the proposed tower height including the blades.
- (7) Property lot lines and the location and dimensions of all existing structures and uses within 1,200 feet of the wind-energy conversion systems.
- (8) Dimensional representation of the various structural components of the tower construction including the base and footing.
- (9) Certification by a registered New York State professional engineer that the tower's design is sufficient to withstand wind loading requirements for structures as established by the New York State Uniform Construction Code.
- (10) Proposed plan for restoration after construction according to NYS Agriculture and Markets publication "Guidelines for Agricultural Mitigation for Wind Power Projects", and NYS Department of Environmental Conservation guidelines.

- (11) Detailed construction plan, including but not limited to a construction schedule, hours of operation; designation of heavy haul routes; a list of material equipment and loads to be transported; identification of temporary facilities intended to be constructed and contact representative in the field with name and phone number.

(12) Turbine Information

The applicant shall submit specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each commercial wind turbine model, tower, and electrical transmission equipment.

(13) Turbine Drawings

The applicant shall submit photographs or detailed drawings of each wind turbine model including the tower and foundation.

(14) Noise Analysis

The applicant shall submit a noise analysis which shall include the following:

- (a) A description and map of the project's noise-producing features, including the range of noise levels expected, and the tonal and frequency characteristics expected. The noise analysis shall include low frequency, infrasound, pure tone, and repetitive/impulsive sound.
- (b) A description and map of the noise-sensitive environment, including any sensitive noise receptors, i.e., residences, hospitals, libraries, schools, places of worship and other facilities where quiet is important within two (2) miles of the proposed facilities.
- (c) A survey and analysis prepared by a qualified engineer, that analyzes the preexisting ambient noise regime (including seasonal variation), including but not limited to separate measurements of low frequency and A-weighted noise levels across a range of wind speeds (including near cut-in), turbulence measurements, distance from the turbines, location of sensitive receptors relative to wind direction; and analyses at affected sensitive receptors located within two (2) miles of the proposed project site.
- (d) A description and map of the cumulative noise impacts.
- (e) A description of the project's proposed noise-control features, including specific measures proposed to protect workers and specific measures proposed to mitigate noise impacts for sensitive receptors consistent with levels in this Section.
- (f) Identification of any problem areas.
- (g) Manufacturer's noise design and field testing data, both audible [dB(A)] and low frequency (deep bass vibration), for all proposed structures.
- (h) An analysis that outlines issues and considerations for individuals that use hearing aids.

(15) Fire Hazard Protection

The applicant shall submit a fire control and prevention program created in consultation with the fire department(s) having jurisdiction over the site. The proposed plan may include, but is not limited to the following:

- (a) Fireproof or fire-resistant building materials.
- (b) Buffers or fire-retardant landscaping.
- (c) Availability of water.
- (d) An automatic fire-extinguishing system for all buildings or equipment enclosures of substantial size containing control panels, switching equipment, or transmission equipment.
- (e) Provision of training and fire-fighting equipment for local fire protection personnel.

(16) Ice Throw Calculations

The applicant shall submit a report from a New York State professional engineer that calculates the maximum distance that ice from the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)

(17) Shadow Flicker Analysis

The applicant shall submit an analysis identifying locations where shadow flicker may be caused by the WECS and the expected duration of the flicker at these locations. The study shall identify locations where flicker may interfere with residences and describe measures taken to eliminate or mitigate the problem, which may include ceasing operation during periods when shadow flicker effects are greatest.

(18) Blade Throw Calculations

The applicant shall submit a report from a New York State professional engineer that calculates the maximum distance that pieces of the turbine blades could be thrown. (The basis of the calculation and all assumptions must be disclosed.)

(19) Catastrophic Tower Failure

The applicant shall submit a report from the turbine manufacturer stating the wind speed and conditions that the turbine is designed to withstand (including all assumptions).

(20) FAA Notification

The applicant shall submit a copy of written notification to the Federal Aviation Administration.

(21) Utility Notification

The applicant shall submit utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.

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

(23) Notification to Microwave Communications Link Operators

An application that includes any wind turbine which is located within two (2) miles of any microwave communications link shall be accompanied by a copy of a written notification to the operator of the link.

(24) Removal and Site Restoration Plan Required

The applicant shall submit a removal and site restoration plan and cost estimate to the Town Planning Board for its review and approval. The restoration plan shall identify the specific properties it applies to and shall indicate removal of all buildings, structures, wind turbines, access roads and/or driveways and foundations to four (4) feet below finish grade; road repair costs, if any; and all regrading and revegetation necessary to return the subject property to the condition existing prior to establishment of the commercial wind-energy facility. The restoration shall reflect the site-specific character, including topography, vegetation, drainage, and any unique environmental features. The plan shall include a certified estimate of the total cost (by element) of implementing the removal and site restoration plan.

(25) Proof of Insurance

Prior to the issuance of a building permit, the applicant shall provide the Town Clerk with proof of insurance in a sufficient dollar amount to cover potential personal and property damage associated with construction and operation thereof. The Town of Porter shall be named as an additional insured under the general liability policy of the applicant.

C. Setback Requirements

The following are minimum set back requirements for a WECS

- (1) 1,000 feet from the nearest site boundary line.
- (2) 1,200 feet from the nearest off-site residence existing at the time of application, measured from the exterior of such residence.
- (3) 1.5 times the height of the WECS from any building.
- (4) 1.5 times the height of the WECS from any non-WEC structure or any above ground transmission lines.

D. Height

A WECS may exceed the height requirement of the District, but shall not exceed 450 feet.

E. Signage

No commercial sign shall be placed or painted onto a WECS.

F. Color and Finish

WECS shall be painted a non-obtrusive color that is non-reflective. (e.g. white, gray, or beige)

G. Lighting

A WECS shall not use any lighting unless required by the FAA.

H. Code Compliance.

A WECS, including tower, shall comply with all applicable state construction and electrical codes, and the National Electrical Code.

I. Safety and Security

- (1) Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or overspeed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, overspeeding and excessive pressure on the tower structure, rotor blades, and turbine components.
- (2) All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
- (3) All wiring between the wind turbines and the wind-energy facility substation shall be underground. The applicant is required to provide a site plan showing the locations of all overhead and underground electric utility lines, including substations for the project.
- (4) All transmission lines from WECS to on-site substations shall be underground.
- (5) The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 50 feet.
- (6) Wind turbine towers shall not be climbable up to 15 feet above ground level.
- (7) All access doors to wind turbine towers and electrical equipment shall be lockable and shall remain locked at all times when operator personnel are not present.
- (8) All structures shall be of monopole construction (single pole). No lattice structures or guy-wire-supported structures shall be permitted.
- (9) Appropriate warning signage shall be placed on wind turbine towers, electrical equipment, and wind-energy facility entrances. Signage shall also include two (2) twenty-four-hour emergency contact numbers to the owner of the wind turbine in accordance with local, state, and federal codes.
- (10) No structure shall be located within the ice throw range of a WECS.

J. Noise Requirements

- (1) A commercial wind-energy facility permit shall not be granted unless the applicant demonstrates that the proposed project complies with all noise regulations.



- (2) The Planning Board may impose a noise setback that exceeds the other setbacks set out in this Section if it deems that such greater setbacks are necessary to protect the public health, safety and welfare of the community.
- (3) The audible noise standard due to wind turbine operations shall not be created which causes the noise level at the boundary of the proposed project site to exceed 45 dB(A) for more than five (5) minutes out of any one (1)-hour time period or to exceed 50 dB(A) for any time period.
- (4) A commercial wind-energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.
- (5) The applicant shall submit a noise complaint and investigation process. The Planning Board shall determine the adequacy of the noise complaint and investigation process.

K. Impact on Wildlife Species and Habitat

- (1) Development and operation of a commercial wind-energy facility shall not have a significant adverse impact on endangered or threatened fish, wildlife, or plant species or their critical habitats, or other significant habitats identified in the Town of Porter Comprehensive Plan and/or the studies and plans of the regional planning commissions based on criteria established by the federal or state regulatory agencies.
- (2) The impact of a commercial WECS on migratory birds and bats shall be evaluated based on SEQRA findings.

L. Remediation Following Installation

- (1) The applicant is responsible for remediation of damaged roads upon completion of the installation or maintenance of a WECS. A public improvement bond shall be posted prior to the issuance of any building permit in an amount, determined by the Town Board, sufficient to compensate the Town for any damage to local roads.

M. Interference

No commercial wind-energy facility shall be installed or operated in a manner that causes interference with radio wave signal.

N. Monitoring requirements for wind-energy conversion systems

- (1) Upon reasonable notice, Town of Porter officials or their designated representatives may enter a lot on which a commercial wind-energy facility permit has been granted for the purpose of compliance with any permit requirements. Twenty-four hours' advance notice by telephone to the owner/operator or designated contact person shall be deemed reasonable notice.
- (2) The applicant shall submit a plan for monitoring the avian impact of the commercial WECS to the Planning Board for its review and approval. Such plan shall document and follow accepted scientific study procedures. The Planning Board may request that the applicant periodically submit documentation reporting the environmental impacts of the operational commercial WECS that shall contain content and be in the form prescribed by the Planning Board.

- (3) Unless waived by the Planning Board, wind turbines or poles shall be inspected annually by a New York State licensed professional engineer who has been approved by the Town or at any other time upon a determination by the Town's Zoning/Code Enforcement Office that the wind turbine, tower or pole may have sustained structural damage, and a copy of the inspection report shall be submitted to the Town Zoning/Code Enforcement Officer. Any fee or expense associated with this inspection shall be borne entirely by the permit holder.

O. Discontinuance of Use

- (1) If the use of any WECS is discontinued, the provider shall notify the Zoning/Code Enforcement Officer within 90 days of such discontinuance.
- (2) Non-function or lack of operation may be proven by reports to the Public Service Commission, NYSERDA, or by lack of income generation. The applicant shall make available (subject to a nondisclosure agreement) to the Town Board all reports to and from the purchaser(s) of energy from individual wind energy conversion systems, if requested, as necessary to prove the WECS is functioning, which reports may be redacted as necessary to protect proprietary information.
- (3) If the WECS will be retained, the provider shall establish that the facility will be reused, and all necessary approvals obtained, within one (1) year of such discontinuance.
- (4) If a WECS is not reused within one (1) year of the abandonment, obsolescence or cessation of use, a demolition permit shall be obtained and the facility removed within 45 days.
- (5) If the WECS is not removed within the time period, the Town shall have the authority to remove the facility at the cost of the owner.
- (6) A surety bond in the amount approved by the Town shall be issued by the applicant payable to the Town of Porter for the removal of non-functioning towers and appurtenant facilities. All removal and restoration funding requirements shall be met prior to commencement of construction.

P. Removal and Site Restoration

- (1) Unsafe commercial wind-energy facilities, inoperable commercial wind-energy facilities, and commercial wind-energy facilities for which the permit has expired shall be removed by the owner. All safety hazards created by the installation and operation of the commercial wind-energy facility shall be eliminated, and the site shall be restored to its natural conditions.
- (2) Every unsafe commercial wind-energy facility and every inoperable commercial wind-energy facility is hereby declared a public nuisance which shall be subject to abatement by repair, rehabilitation, demolition, or removal. An inoperable commercial wind-energy facility shall not be considered a public nuisance, provided that the owner can demonstrate that modernization, rebuilding or repairs are in progress or planned and will be completed within no more than six (6) months.

**§ 59 Wind Energy Conversion Systems (Non-Commercial)**

Non-commercial Wind Energy Conversion Systems (WECS) shall be used primarily to reduce on-site consumption of utility provided electricity. In no case shall a non-commercial WECS be constructed which would exceed 110% of the anticipated energy demand for the property collectively, including existing non-commercial WECS on the same property. Non-Commercial WECS shall be permitted as an accessory use for farming operations and private residential energy use provided the following.

**A. Submission Requirements**

Applications for Non-Commercial Wind Energy Conversion Systems (WECS) shall require the following information.

- (1) Name, address, and telephone number of the property owner. If the property owner is not the applicant, the application shall include the name, address, and telephone number of the applicant and a letter or other written permission signed by the property owner authorizing the applicant to represent the property owner.
- (2) Location of the tower(s) on the site and the tower height, including blades, rotor diameter and ground clearance.
- (3) Utility lines, both above and below ground, within a radius equal to the proposed tower height including the blades.
- (4) Property lot lines and the location and dimensions of all existing structures and uses on site within 200 feet of the wind-energy conversion systems.
- (5) Specific information on the type, size, height, rotor material, rated power output, performance, safety, and noise characteristics of each wind turbine model, tower, and electrical transmission equipment.
- (6) Utility interconnection data and a copy of a written notification to the utility of the proposed interconnection.
- (7) An applicant for a non-commercial WECS for a farm operation must prove that the WECS does not generate more than 110% of a farm's anticipated needs including living facilities.
- (8) In addition to the above requirements, applicants for non-commercial WECS for private residential use, or non-farm operations, shall comply with the submission requirements for Site Plan Review contained in §106 of this Law.

**B. Setback Requirements**

The following are minimum set back requirements for a WECS

- (1) 1.5 times the height of the WECS from any building.
- (2) 1.5 times the height of the WECS from any property lines.
- (3) 1.5 times the height of the WECS from any above ground transmission lines.

**C. Placement**

- (1) The system shall be designed and located in such a manner to minimize adverse visual impacts from public viewing areas, e.g. public parks, roads, trails. Non-commercial WECS for a farm operation in a Niagara County adopted, State certified Agricultural District are exempt from this regulation.

- (2) Anchor points for guy wires for the on-site use WECS shall be located within the property lines.

D. Height

A non-commercial WECS may exceed the height requirement of the District, but shall not exceed 150 feet. A variance may be granted allowing the height of a non-commercial WECS used for farm operations in a County adopted, State certified Agricultural District to be increased if it is determined an increase in height is necessary so that the wind turbine may be located above an existing tree canopy or natural land formation.

E. Signage

- (1) At least one sign shall be posted on the tower at a height of five feet warning of electrical shock or high voltage and harm from revolving machinery.
- (2) No commercial sign shall be placed or painted onto a non-commercial WECS.

F. Color and Finish

Non-commercial WECS shall be painted a non-obtrusive color that is non-reflective. (e.g. white, gray, or beige)

G. Lighting

A non-commercial WECS shall not use any lighting unless required by the FAA.

H. Noise

- (1) The level of noise produced during non-commercial wind turbine operations, measured at a distance of 1,000 feet from the base of the non-commercial WECS or from the nearest offsite residential structure shall not exceed 45 dB(A) for more than five (5) minutes out of any one (1) hour time period or exceed 50 dB(A) for any time period.
- (2) A non-commercial wind energy facility shall not be operated so that impulsive sound below 20 Hz adversely affects the habitability or use of any dwelling unit, hospital, school, library, nursing home, or other sensitive noise receptor.

I. Code Compliance.

A non-commercial WECS, including tower, shall comply with all applicable state construction and electrical codes, and the National Electrical Code.

J. Safety and Security

- (1) Each wind turbine shall be equipped with both manual and automatic controls to limit the rotational speed of the blade within the design limits of the rotor. Manual electrical and/or over-speed shutdown disconnect switches shall be provided and clearly labeled on the wind turbine structure. No wind turbine shall be permitted that lacks an automatic braking, governing, or feathering system to prevent uncontrolled rotation, over-speeding and excessive pressure on the tower structure, rotor blades, and turbine components.
- (2) The system shall be operated such that no disruptive electromagnetic interference is caused. If it has been demonstrated that a system is causing harmful interference, the system operator shall promptly mitigate the harmful interference or cease operation of the system.

- (3) The system shall be operated such that no damage is caused by stray voltage. If it has been demonstrated that a system is causing stray voltage, the system operator shall promptly mitigate the damage or cease operation of the system.
- (4) All structures which may be charged with lightning shall be grounded according to applicable electrical codes.
- (5) All transmission lines from non-commercial WECS shall be underground.
- (6) The blade tip of any wind turbine shall, at its lowest point, have ground clearance of not less than 20 feet.
- (7) Wind turbine towers shall not be climbable up to 15 feet above ground level.

K. Discontinuance of Use

- (1) If the use of any WECS is discontinued, the provider shall notify the Zoning/Code Enforcement Officer within 90 days of such discontinuance.
- (2) If the WECS will be retained, the provider shall establish that the facility will be reused, and all necessary approvals obtained, within one (1) year of such discontinuance.
- (3) If a WECS is not reused within one (1) year of the abandonment, obsolescence or cessation of use, a demolition permit shall be obtained and the facility removed within 45 days.
- (4) If the WECS is not removed within the time period, the Town shall have the authority to remove the facility at the owner's expense.

§ 60 Reserved

§ 61 Reserved

§ 62 Reserved

§ 63 Reserved



## Article V. Requirements Applying to All Districts

### § 64 Purpose

The Requirements Applying to all Districts regulate activities, uses, structures, conditions and treatments that may be present on a property whether or not a principal structure or use is present. These requirements contribute to and promote the health, safety, comfort, convenience and/or necessity of the property's occupants, the immediate neighborhood and/or the entire Porter community.

### § 65 Address Numbers

All property owners within the boundaries of the Town of Porter shall affix, or cause to have affixed, the legal address street number(s)

- A. For all primary buildings the street number shall be conspicuously displayed on that side of the building which faces the main vehicle access.
- B. For primary buildings not readily visible from the street, the assigned street number(s) shall also be conspicuously displayed at the main vehicular (or pedestrian if no vehicular access exists) access to the property, so as to be visible on a year-round basis. The preferred method of display at the main vehicular or pedestrian access shall be on both sides of a mailbox. The front may be used when applicable. If a mailbox is not located at the main access, or if there is no mailbox, then the assigned street number shall be displayed on a sign post or similar means at the main access.
- C. All displayed street numbers shall be of a contrasting color to the means of support such as the primary building, mailbox, post, etc.
- D. All displayed street numbers shall be at least 3-1/2 inches in height 2-1/2 inches in width and affixed in a permanent manner.
- E. All displayed street numbers shall be in Arabic form.

### § 66 Air Conditioning Systems/Mechanical Equipment

- A. Ground-mounted mechanical equipment shall not be located in the front yard.
- B. Ground-mounted mechanical equipment shall be concealed from public streets and abutting lots. This requirement only applies to commercial uses.
- C. Rooftop mechanical equipment shall be concealed so as to not be visible from the street.

### § 67 Air Quality

A development shall not emit smoke, dust, heat or heated air, noxious odors, odorous gases or other matter in such quantities as to be readily discernable on neighboring property and detrimental to the use and enjoyment of such neighboring property. This requirement does not apply to legitimate farming operations.

## § 68 Dwelling Standards

### A. Minimum Floor Area

#### (1) Single-family Dwellings

(a) A one (1) story dwelling shall have a minimum of 1,000 square feet of floor area.

(b) A two (2) story dwelling shall have a minimum of 1,200 square feet of floor area.

### B. Two-family dwelling

One (1) dwelling unit shall have a minimum of 1,000 square feet of floor area. The other dwelling unit shall have a minimum of 800 square feet of floor area.

### C. Multi-family Dwellings and Dwelling Groups

(1) All dwelling units shall have a minimum of 700 square feet of floor area.

(2) There shall be a minimum of 500 square feet of usable open space for every dwelling unit on a single lot.

(3) On lots containing more than 12 dwelling units, there shall be a minimum of 200 square feet per dwelling unit provided for community open space in addition to the usable open space.

(4) Any two (2) primary structures in a dwelling group, dwelling units shall be separated by a minimum of the average height of the two (2) structures at their closest distance.

### D. Mobile Home

Dwelling standards shall not apply to mobile homes as defined and regulated herein.

## § 69 Excavation, Site Grading, and Filling

A. No person shall strip, excavate, or otherwise remove soil for use other than on the premises from which the soil was taken except in direct connection with an improvement or operation on such premises for which a building permit has been issued.

B. A grading/drainage plan approved by the Town Engineer shall be required as part of the building permit process.

C. Lot grading will be done in such a way as to preserve or enhance the topographic features and to provide positive drainage. All site grading shall be designed to meet the following standards:

	Minimum Slope (percent)	Maximum Slope (percent)
Planting Areas	2.5	12
Parking Lot Pavement	2.5	4
Driveways	2.5	6
Pedestrian Pavements	1.5	2
Sidewalks	1.5	5

D. Where retaining walls are required, they shall be of a material compatible with the building architecture.

E. Grade changes shall not adversely affect surrounding properties in terms of drainage.



- F. Berms, channels, swales, etc. shall be graded in such a way as to be an integral part of the grading and paved surface. Such features shall be designed with smooth vertical transitions between changes in percent of slope.
- G. All structures including driveways, walkways, and accessory buildings shall be designed so as to minimize the amount of cutting into the embankment, general grading and removal of vegetative cover.

**§ 70 Fences and Walls**

The following shall apply to all fences and walls in the Town of Porter except those necessary to restrain animals on a farm operation.

**A. Permit Required**

No fence or wall shall be constructed without obtaining a building permit

**B. Heights**

- (1) The height of all fences or walls shall be measured from the average existing grade.
- (2) Except in the Industrial District, fences or walls shall not exceed six (6) feet in height.
- (3) Within all residential districts, a fence or wall, other than a necessary retaining wall, over three (3) feet in height shall not extend between the building line of the primary structure and the road.
- (4) A fence of ten (10) feet shall be allowed to enclose a tennis court, provided that such fencing is not less than 25 feet from either side or the rear property line.
- (5) Fences and walls in an industrial district shall not exceed eight (8) feet.

**C. Placement**

- (1) Fences may be constructed up to any lot line provided that it is erected wholly on the property of the owner and neither the fence itself nor any supporting accessory components thereof shall encroach upon the adjoining properties.
- (2) All fences shall be so installed so that the better side shall face outward; all bracing shall be on the inside of the fence.

**D. Fence Surface**

- (1) In Residential Districts, fences not more than 60% solid may be located in any front yard or in any yard with street frontage.
- (2) Fences erected parallel to the shoreline on property that is adjacent to Lake Ontario or the Niagara River shall not be more than 10% solid.
- (3) The use of razor wire and barbed wire is prohibited.
- (4) Where walls and fences are required, they shall be of a material compatible with the building architecture.
- (5) All required fences and walls shall be maintained and, when necessary, repaired or replaced.

E. Street Intersections

At the intersection of two (2) or more streets, no hedge, fence or wall which is higher than three (3) feet above curb level, nor any obstruction to vision shall be permitted in the triangular area formed by the intersecting street lines and a line joining each 50 feet distant from said intersection along said street lines.

**§ 71 Hazardous Materials in Residential Districts**

These regulations apply to Residential Districts only.

- A. Hazardous materials shall not be discharged at any point into any public or private sewerage system, watercourse or the ground.
- B. Besides necessary fuel storage and the storage of chemicals used in the maintenance of property such as fertilizers for farm operation, chlorine for pools, and household cleaning agents, the storage of hazardous chemicals or explosives is prohibited.

**§ 72 Junk Vehicles**

- A. Junk vehicles shall be stored within a completely enclosed building or shall be surrounded by a solid stable fence or wall designed to be completely opaque.
- B. A maximum of one (1) junk vehicle may be maintained outdoors if surrounded by a solid stable fence or wall.
- C. More than one (1) junk vehicle stored outdoors, even if surrounded by a solid stable fence or wall, will constitute a junkyard and shall be prohibited.
- D. Sustained progress in restoring a junk automobile to operational condition shall be allowed under the following conditions and said vehicle shall not constitute a junk vehicle:
  - (1) A maximum of one (1) restoration per any single parcel.
  - (2) The entire restoration shall take a reasonable time to accomplish.
  - (3) Such vehicles shall be located so as to create the least nuisance possible.
  - (4) Noise associated with the restoration shall be limited to reasonable hours.
- E. Restoration shall be for personal use only, and not for profit.
- F. These regulations shall not apply to active farming operations and vehicle repair stations.

**§ 73 Landscaping and Buffering**

A. Landscaping Requirements –

General landscaping requirements apply only where landscaping is mandated by this Chapter for general appearance or for buffering or screening. Landscaping may include existing and new vegetation, berms, lighting, street furnishings, and ornamental features which are integrated with vegetation. The requirements do not apply to private residential landscaped areas.

- (1) Landscaping sufficient to provide appropriate ground cover, trees, shrubs, etc to be determined upon site plan review.
- (2) Buffers, screening, fencing as required or appropriate to be determined upon site plan review

- (3) Whenever possible, development plans shall be designed so as to minimize the number of trees (6 inch caliper and greater) which would have to be removed

B. Maintenance

All required planting shall be permanently maintained in good condition, and, when necessary, replaced with new plant material to ensure continued compliance with these standards. For the purpose of enforcement, the property owner shall be responsible for maintenance. Maintenance shall include watering, weeding and pruning.

**§ 74 Lighting**

The following lighting design standards are provided to ensure coordinated, safe and functional lighting systems. The site lighting requirements include:

- A. This Section shall not apply to temporary holiday lighting, emergency lighting, or temporary lighting used for construction.
- B. No light source or combination thereof which casts light on a public street shall exceed one (1) footcandle meter reading as measured from the centerline of said street, nor shall any light source or combination thereof which casts light on adjacent property exceed five-tenth (0.5) footcandles as measured at any point of the property line.
- C. Pedestrian areas, plazas and walk lights shall not exceed 15 feet in height and shall be designed to be harmonious with light fixtures on site.
- D. All commercial and residential entrances shall have a means for illumination, but do not have to be continuously illuminated.
- E. Soft lighting of building faces is encouraged. Building lighting should be indirect in character. Indirect wall lighting or “wall-washing” overhead down lighting or interior illumination that spills outside is encouraged. Architectural lighting should articulate the particular building design and provide required functional lighting for safety and clarity of pedestrian movement.
- F. All light fixtures shall be concealed source fixtures except for pedestrian oriented accent lights.
- G. Security lighting fixtures shall not project above the façade or roofline of any building and are to be shielded. Lighting shields shall be painted to match the surface to which they are attached. Security lighting fixtures shall not be substituted for parking lot or walkway lighting fixtures and are restricted to lighting only loading and storage locations or other similar areas requiring security lighting.
- H. Service-area lighting shall be contained within the service yard boundary. No light spillover shall occur outside the service area; the light source should not be visible from the street.
- I. When possible, overhead wiring should be avoided.

- J. To assure that site lighting does not adversely affect neighboring properties, the Building Inspector shall have the authority to require changes to the on-site fixtures to reduce and minimize glare and the splaying of light at the property lines and to assure continuous compliance with this Section. Such changes may include, but are not limited to lower wattage bulbs, the addition of shields to deflect light, and changes to the angle of the fixtures or shields. Failure to implement the changes as directed by the Building Inspector shall be a violation of any permit or approval granted under this Section.

## **§ 75 Noise Limitations**

The Town of Porter recognizes that people have the right to and should be ensured an environment free from unreasonable, excessive noise that may jeopardize their health or safety or welfare or degrade their quality of life or value of their real property. This Section is enacted to protect, preserve, and promote the health, well-being and quality of life for the residents of the Town of Porter through the reduction, control, and prevention of unreasonable and unnecessary noise.

- A. Except as provided in this Subsection below, no person shall cause, suffer, or allow sound from the premises of any permitted use that creates a public inconvenience, annoyance or alarm, or recklessly creates a risk thereof by the making of unreasonable noise.
- B. For the purposes of this law, unreasonable noise shall mean any sound that is excessive or unusually loud and that disturbs the peace, comfort or repose of a reasonable person of normal sensitivities.
- C. Factors to be considered in determining whether unreasonable noise exists include, but are not limited to the following:
  - (1) The level of the noise.
  - (2) Whether the nature of the noise is usual or unusual.
  - (3) Whether the origin of the noise is associated with nature or human-made activity.
  - (4) The intensity of the background noise, if any.
  - (5) The proximity of the noise to sleeping facilities.
  - (6) The nature and the zoning district of the area within which the noise emanates and the areas where it is received.
  - (7) The time of the day or night the noise occurs.
  - (8) The duration of the noise.
  - (9) Whether the noise is recurrent, intermittent, or constant.
  - (10) The existence of complaints concerning the noise from persons who are affected by the noise.
- D. Noise Prohibitions
  - (1) The following acts are deemed to be in violation of this chapter when the sound there from is unreasonable noise as defined in Section B above. This enumeration is not exclusive:

- (a) The playing of any noise producing devices such as radios, electronic devices, televisions, CD players, loudspeakers, public address systems, musical instruments, and other amplification devices in such a manner or with such volume as to be audible beyond the property line of the premises upon which it is being used between the hours of 10:00 pm and 7:00 am, or audible at a distance of 50 feet beyond the property line of the premises upon which it is being used between the hours of 7:00 am and 10:00 pm.
- (b) Noise from a dog or other pet animal that disturbs the comfort and repose of any person in the vicinity and exceeds a period of 30 minutes, continuously or intermittently.
- (c) The sounding of any horn, security alarm or other auditory signaling device emanating from any structure, vehicle, vessel, engine, machine, or stationary boiler for a period of time longer than 15 minutes, except as required by law or to provide a warning signal during use thereof. This provision shall not be construed to prohibit the use and operation of a signal device on an emergency vehicle.
- (d) The use of any automobile, motorcycle, recreational vehicle or like vehicle so out of repair or operated in such a manner or at such a time as to create loud and unnecessary noise.
- (e) No person shall operate or cause to be operated, any recreational motorized vehicle, whether or not duly licensed and registered, either on or off a public right-of-way or on private lands at any time in such a manner as to create an unreasonable noise.
- (f) No person shall cause or permit discharge into the open air of the exhaust of any device, including, but not limited to any steam engine, diesel engine, internal combustion engine or turbine engine, so as to create an unreasonable noise.
- (g) The operation of any power equipment, including a chainsaw, drill, grinder, lawn mower or garden tool, leaf blower, or similar tool in residential zones outdoors between the hours of 9:00 pm and 7:00 am on Mondays through Fridays and between the hours of 9:00 pm and 8:00 am on Saturdays, Sundays, and legal holidays. The hours restriction herein shall not apply to snow blowers during their normal use to remove snow.
- (h) The operation or causing the operation of any tools or equipment used in construction, excavation, demolition, grading, alteration or repair work between the hours of 9:00 pm and 7:00 am on Mondays through Fridays and between the hours of 9:00 pm and 8:00 am on Saturdays, Sundays, and legal holidays, except for emergency work or work performed by public service utilities.
- (i) No person shall cause or permit the creation of any unreasonable noise adjacent to a hospital, school, library, nursing home, or long term medical or mental care facility which interferes with the workings of such institutions or disturbs or annoys the occupants of said institutions, provided that conspicuous signs are displayed indicating the location of such facility.

- (j) No person shall cause or permit the creation of any unreasonable noise resulting from loud or raucous behavior likely to annoy or disturb the peace, comfort or repose of a reasonable person of normal sensitivities.

E. Exceptions

- (1) In addition to specific exceptions provided above, these provisions shall not apply to the following:
  - (a) The emission of sound for the purpose of alerting persons to the existence of an emergency.
  - (b) Noise from the use of machinery or equipment for public or private emergency needs or purposes.
  - (c) Noise from the use of any authorized machinery or equipment for the purpose of the maintenance and repair of public roads and highways, including snowplows.
  - (d) Noise generated by the installation and maintenance of utilities.
  - (e) Agricultural activities on land zoned for such activities.
  - (f) Noise from Town sponsored celebrations or events.
  - (g) Noise from non-sponsored events which have been authorized by the Town.
  - (h) The operation or use of any organ, bells, chimes or sound amplifiers associated with a church, synagogue or any other place of public worship.
  - (i) Refuse collection vehicles.
  - (j) The discharge of firearms for the purposes of hunting during the hours and locations permitted by state and local law.
  - (k) Activities of the Town, school, law enforcement, or volunteer fire company in performance of its duties, drills or public demonstrations.
  - (l) Noise from any legitimate commercial or industrial use or activity located in its proper zone as long as the noise emanating therefrom does not begin prior to the hour of 7:00 am and does not regularly run beyond the hour of 12:00 am or is not otherwise scheduled to run beyond 12:00 am.

F. Enforcement

The noise control requirements established by this chapter shall be administered and enforced by the Town of Porter Code Enforcement Officer, and/or the law enforcement agency that has jurisdiction in the Town of Porter.

**§ 76 Off-street Parking Requirements**

A. Computation of Required Spaces

- (1) In stadiums, sports arenas, churches and other places of assembly in which patrons or spectators occupy benches, pews or other similar seating facilities, each 20 inches of such seating facility shall be counted as one (1) person to establish occupant capacity.

- (2) When parking spaces are required on the basis of the number of faculty staff, students and employees, the maximum number present at any one (1) time shall govern.
- (3) For uses not expressly listed in this Section, parking spaces shall be provided on the same basis as required for the most similar listed use.
- (4) The number of parking spaces may include both covered and open air parking spaces

**B. Required Parking Spaces**

- (1) The number of off-street parking spaces provided shall be between a minimum of 80% and a maximum of 110% of the following parking standards.

Use	Parking Standard
<b>RESIDENTIAL</b>	
Single-family detached, semidetached, two-family and attached dwelling	2 per dwelling unit
Multiple Family dwelling	2 per dwelling unit
Senior Housing	Parking Demand Analysis
<b>EDUCATIONAL AND RELIGIOUS</b>	
Day care or nursery	1 per 6 persons enrolled
Place of worship	1 per 3 seats at maximum capacity
Rectory, Parsonage, Church Office	2 plus 1 per employee
Schools, elementary and intermediate	2 per classroom
School, secondary	1 per 10 students plus 2 per classroom
<b>CULTURAL AND RECREATIONAL</b>	
Amusement facility	1 per every 5 customers, plus 1 per employee
Auditorium and theaters	1 per 4 seats at maximum capacity
Bowling alley	5 per lane, plus any bar/restaurant requirements
Community center	1 per 250 SF net floor area
Health clubs and similar facilities	1 per 250 SF net floor area
Entertainment	0.5 per allowable occupancy
Library	1 per 1,000 SF net floor area
Museum or art gallery	1 per 500 SF net floor area
Private club or lodge	1 per 50 SF net floor area
Skating rink	1 per 1,000 SF of rink area
Stadium or sports arena	1 per 5 seats
Swimming pool	1 per 4 persons design capacity
<b>GOVERNMENT, SAFETY AND HEALTH</b>	
Hospital	1 per each bed
Medical clinic, medical office	1 per 250 SF net floor area
Nursing home	1 per 4 beds plus 1 for every employee during largest working shift
Funeral home	1 per 4 seats at maximum capacity
<b>MANUFACTURING AND INDUSTRIAL</b>	
All uses	1 per each employee on largest shift
<b>RETAIL</b>	
Food store	1 per 250 SF net floor area
Convenience store	1 per 150 SF net floor area
General retail, retail plazas	1 per 200 SF net floor area

Use	Parking Standard
Home occupations	2 for client purposes, 1 for non-resident employee, plus any dwelling related requirements
<b>SERVICES</b>	
Bank	1 per 500 SF net floor area
Bed and breakfast	1 per guest bedroom plus 1 for the proprietor
Beauty parlor, barbershops and the like	1 per chair
Dry cleaning and Laundromat	1 per 500 SF net floor area
Hotel and motel	1 per guest bedroom
Office, professional or business	1 per 100 SF net floor area
Restaurants, bars, taverns	1 per 2seats
<b>VEHICLE RELATED USES</b>	
Vehicle repair stations	2 per bay, minimum of 6
Vehicle service (fueling) station	1 per every 100 SF net floor area
Vehicle sales	5 plus 1 per employee, plus repair center requirements
Vehicle rental	1 per 1,000 SF net floor area

C. Shared Parking

Parking requirements may be satisfied through shared parking arrangements provided the following conditions apply:

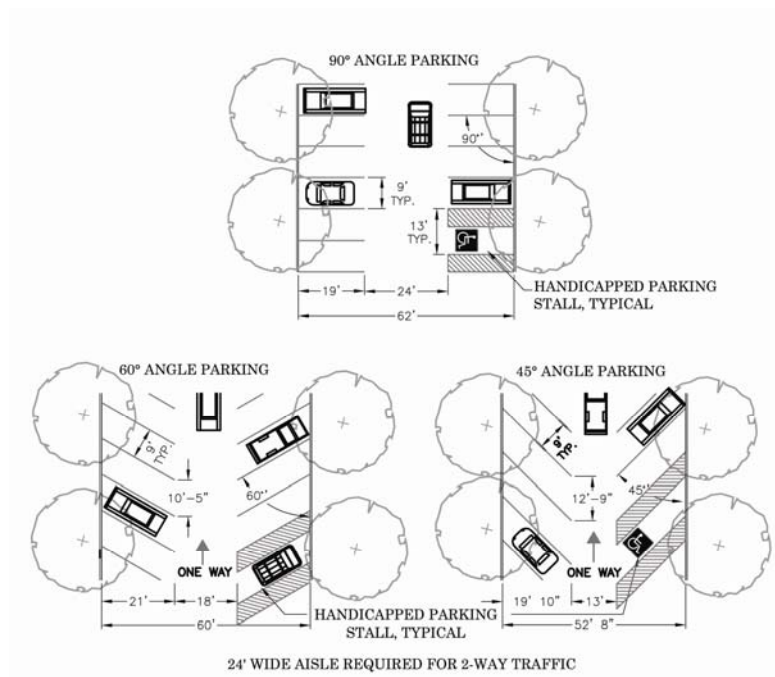
- (1) The shared parking arrangement is between non-residential uses.
- (2) All provided parking is within 500 feet of the main entrance of each use.
- (3) A shared parking study is prepared, which demonstrates that the parking requirements can be achieved for all uses involved during their respective peak parking time periods.
- (4) A written shared parking agreement is signed by all involved property owners and such agreement is transferred as easements with the property deeds.

D. Space Sizes

The following minimum standards shall apply to the width and length of required parking spaces.

Type of Parking	Angle	Parking Space Length	Parking Space Width	Aisle Width
Traditional	90	19'00"	9'00"	24'00"
Traditional	60	21'00"	9'00"	18'00"
Traditional	45	19'10"	9'00"	13'00"
Handicapped	90	19'00"	13'00"	24'00"
Handicapped	60	21'00"	13'00"	18'00"
Handicapped	45	19'10"	13'00"	13'00"





E. Turn Around Required

Except for single and two-family dwellings on local streets, all parking facilities shall have a suitable turn around area so that there will normally be no need for motorists to back onto highways.

F. Location as Related to Use

All required parking spaces provided pursuant to this Section shall be on the same lot with the related use except that the Planning Board may allow for the parking space to be on any lot within 300 feet of the use if it is determined it is impractical to provide space on the same lot with the use.

§ 77 Off-street Stacking Requirements

The vehicle stacking standards of this Subsection shall apply:

A. Minimum Number of Spaces

In addition to minimum parking requirements established in this Law, the following stacking or queuing areas are required

Activity Type	Minimum Stacking Spaces Per Lane or Stall	Measured From
Automated teller machine	4	Teller
Bank teller lane	5	Teller or Window
Car wash stall, automatic	10	Entrance
Car wash stall, self-service	3	Entrance
Gasoline pump island	2	Pump Island
Pharmacy	4	Window
Restaurant drive-thru	6	Order Box
Restaurant drive-thru	4	Order Box to Pick-Up Window
Oil change and quick lube	3	Entrance
Other	Determined by Planning Board during Site Plan Review	

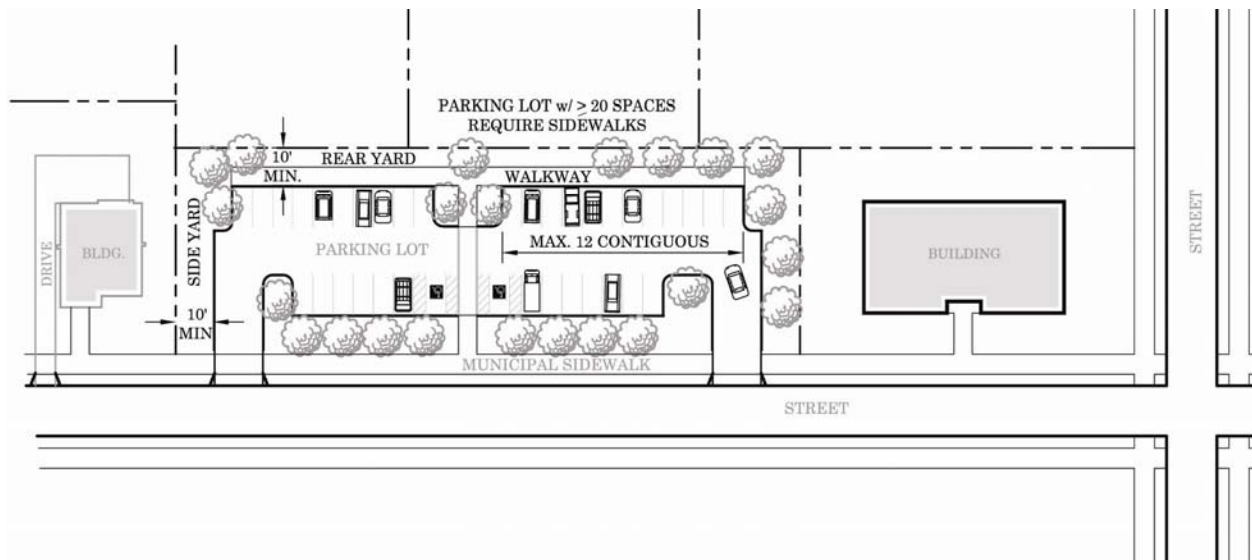
B. Design and Layout

Required stacking spaces are subject to the following design and layout standards.

- (1) The size of a stacking or queuing space shall be 20 feet in length by ten (10) feet in width.
- (2) Each lane shall be clearly defined in a manner that is identifiable during all seasons.
- (3) Stacking spaces may not impede on-site or off-site traffic movements or movements into or out of off-street parking spaces.
- (4) Stacking spaces must be separated from other internal driveways by raised and planted medians if deemed necessary by the Planning Board for traffic movement and safety.

**§ 78 Outdoor Parking**

- A. Parking lots shall not be located at street intersections.
- B. Parking lots shall be surfaced with an all-weather, durable and dustless surface and shall be graded and drained to dispose of surface water accumulation.
- C. Side and rear yard setback shall be a minimum ten (10) feet and buffered.
- D. The maximum length of a row of contiguous parking spaces shall be 12 spaces.
- E. Clearly defined and marked walkways to provide for the safe movement of pedestrians shall be required within parking lots with 20 or more spaces.
- F. Any parking lot with more than 40 spaces shall provide landscaped areas within the parking lot equal to a minimum of 10% of the gross area of the parking lot. The number and type of landscaping shall be determined by the Planning Board.



## § 79 Property Maintenance

### A. Purpose

To provide a method whereby vacant lands, improved properties and public lands, including roads and right-of-ways are properly maintained, properly repaired, kept clean, and kept free from vermin, nuisances, hazards, debris and litter. The outdoor storage, accumulation, deposit or placement of abandoned, junked, discarded, wholly or partially dismantled or unlicensed or unregistered motor vehicles, rubbish, debris, or solid waste upon private property constitutes a public nuisance.

### B. Compliance Required

- (1) All structures and premises, residential, commercial and industrial, shall comply with the provisions of this Section, whether or not those structures and premises have been constructed, altered, or repaired before or after the enactment of this chapter and irrespective of any permits or licenses which may have been issued for their use or occupancy prior to the effective date of this chapter. Vacant lots, land and premises are also required to comply with the provisions of this Section. This Section does not replace or modify standards otherwise established for the construction, repair, alteration or use of the structure, the premises or equipment or use of the structure, the premises or the equipment of facilities contained therein, as are required by the New York State Uniform Fire Prevention and Building Code.
- (2) In any case where a provision is found to be in conflict with any applicable zoning, building, plumbing, electrical, heating, ventilation, fire or safety code of the Town of Porter, Niagara County, State of New York or United States of America, the provision that establishes the higher standard, as determined by the Code Enforcement Officer, shall prevail.

### C. Maintenance

It shall be the duty of the owner, operator and/or occupant to keep the exterior of the premises free of nuisances, which include but are not limited to the following:

- (1) Garbage and/or other refuse.
- (2) Natural growth, such as dead and dying or storm-damaged trees and limbs or other growth, which by reason of its condition or nature, constitutes a hazard to persons lawfully in the vicinity. Trees shall be kept pruned and trimmed to prevent such conditions. Owners of vacant premises must keep them free of nuisances.
- (3) Ground surface hazards, such as holes, excavations, breaks or projections. On residential premises within five (5) feet of an unfenced property line or on any part of a nonresidential premise to which the public has lawful access.
- (4) Sources of infestation, including all environments and conditions conducive to the increase or spread of vermin. The owner of any structure found to be infested with rats, termites, roaches and/or other insects or vermin shall undertake an expedient mean of extermination of such nuisances.
- (5) Surface or subsurface water shall be appropriately drained to protect buildings and structures and to prevent the development of stagnant ponds.
- (6) Lawns, except for pastureland, woodland, or land under cultivation, shall be cut and bushes, shrubs and hedges shall be trimmed regularly during the growing season so as to avoid an unsightly appearance.

D. Exterior Standards

- (1) The exterior of all premises, whether vacant, unoccupied, or occupied shall be kept free of the following matter, materials or conditions:
  - (a) Abandoned, uncovered or structurally unsound wells, shafts, towers, exterior cellar openings, basement hatchways, foundations or excavations.
  - (b) Abandoned iceboxes, refrigerators, heaters, television sets, and other similar major appliances.
  - (c) Animal excrement, excluding farm animals.
  - (d) Buried or open to view any rubble, refuse or rubbish as herein defined.
  - (e) Nuisances as herein defined.
- (2) The exterior of a structure shall be maintained structurally sound and sanitary so as not to pose a threat to the health and safety of the occupants and so as to protect the occupants from the environment. Structures shall be maintained so as to reflect a level of maintenance in keeping with the appearance of the neighborhood and such that the appearance of the premises and structures shall not constitute a blighting factor for adjoining property owners nor an element leading to the progressive deterioration and downgrading of the neighborhood with the accompanying diminution of property values.
- (3) All exposed exterior surfaces shall be maintained free of broken or cracked glass, loose shingles or loose or crumbling stones or bricks, loose shutters, railings, aerials, excessive peeling paint or other conditions reflective of deterioration or inadequate maintenance. Said conditions shall be corrected by repair or removal. All exposed exterior surfaces not inherently resistant to deterioration shall be coated, treated or sealed to protect them from deterioration or weathering. Wood, masonry or other exterior materials that will naturally resist deterioration do not have to be treated, but must be maintained in a sound, secure workmanlike manner. Exterior surfaces that have been painted or otherwise coated must be maintained in a neat, orderly, serviceable manner so as to prevent the collapse of the same or injury to the occupants of the building or to the public.
- (4) Residential, commercial and industrial premises, whether improved or vacant, shall be maintained free of litter. Dumpsters and similar large receptacles shall be screened from the public view by means of landscaping, hedges, fences or screening.
- (5) An occupant of premises shall be responsible for compliance with this Section in regard to the following:
  - (a) Maintenance of that part of the premises which he occupies or controls in a clean, sanitary and safe condition.
  - (b) Keeping exits from the building or occupant's portion thereof clear and unobstructed.
  - (c) Disposal of garbage and refuse into appropriate facilities in a clean and sanitary manner.
  - (d) Maintenance of yards in appropriate manner for the part of yard he occupies.

- (e) Installation and removal of required screens.
  - (f) Keeping domestic animals and pets in an appropriate manner and under control, in accordance with other regulations of the Town.
  - (g) Elimination of all prohibited uses for that part of the premises which he occupies, controls, or to which he has accessibility.
- (6) The owner of the premises shall be responsible for compliance with this Section in regard to the following:
- (a) Owners shall be responsible for compliance with the provisions prescribed herein and shall remain responsible regardless of the fact that this Section may also place certain responsibilities on operators and occupants and regardless as to which party shall assume such responsibility.
  - (b) Owners and operators of buildings shall be responsible for the proper installation, maintenance, condition and operation of service facilities and for furnishing adequate heat and hot water supply where they have contracted to do so.
  - (c) Whenever any person or persons shall be in actual possession of or have charge, care or control of any property within the town as executor, administrator, trustee, guardian, operator or agent, such persons shall be deemed and taken to be the owner or owners of said property within the intent and meaning of this Section and shall comply with the provisions of this Section to the same extent as the record owner, and notice to any such person of any order or decision of the Code Enforcement Officer shall be deemed and taken to be good and sufficient notice, as if such person or persons were actually the record owner. In instances where an occupant is responsible or shares responsibility with the owner for the existence of one (1) or more violations of this Section, said occupant shall be deemed and taken to be an owner within the intent and meaning of this Section.

E. Inspection and Enforcement

- (1) The Code Enforcement Officer of the Town of Porter is hereby designated as the officer(s) in charge with the enforcement of this code.
- (2) The Code Enforcement Officer shall be authorized and directed to make inspections of premises within the Town of Porter as (s)he shall deem necessary to effect compliance with this chapter and shall have the authority to use the services and public authority in the enforcement of this code.
- (3) Whenever the Code Enforcement Officer determines that there is a violation of the provisions of this chapter, (s)he shall cause a written notice to be served upon the owner or operator, which shall include:
  - (a) An enumeration of conditions which violate the provisions of this Section.
  - (b) An enumeration of the remedial action required to meet the standards of this Section.

- (c) A statement of a definite number of days from the date of the notice in which the owner or operator must commence and complete such remedial action, not to exceed 30 days, except in the case of citation for grass and/or weeds, in which case remediation must be completed within ten (10) days.
  - (d) A statement of the penalties for noncompliance, as set forth herein.
  - (e) In the case where the violation presents a clear and present danger to public health and safety, the complaint is to be turned over to the Niagara County Health Department, and/or the complaint is to be processed in Town Court for prompt action within its jurisdictions.
  - (f) Where the violation or conditions existing on the premises are of such a nature as to constitute an immediate threat to life and limb unless abated without delay, the enforcement officer may either abate the violation or condition immediately, or order the owner, occupant or operator to correct the violation or condition within a period of time not to exceed three (3) days. Upon failure to do so, the enforcement officer shall abate the condition subject to the provisions of subsection E of this Section.
- (4) A copy of such notice shall be filed in the Town Clerk's office, and such notices shall be deemed sufficient if served upon the owner or operator as follows:
- (a) In person;
  - (b) By certified mail with return receipt requested; or
  - (c) By posting a copy of said notice on the building, only if attempts to serve the owner or occupant by the first two (2) methods is unsuccessful.
- (5) Upon failure to comply with said notice, the enforcement officer shall issue an appearance ticket returnable in Town of Porter Court.

F. Abatement by Town

Where abatement of any nuisance, as defined herein, correction of a defect in the premises or work necessary to place the premises in a proper condition so as to conform to ordinances of the Town of Porter or applicable laws of the State of New York required expending town moneys, the enforcement officer shall present a report of work proposed to be done to accomplish the foregoing to the Town Board with an estimate of the cost, along with a summary of the proceedings undertaken by the enforcement officer to secure compliance, including notices served upon the owners, occupants or operators or their agents, as the case may be. The Town Board may thereupon, by resolution, authorize the abatement of the nuisance, correction of the defect or work necessary to place the premises in proper condition and in compliance with this code. The enforcement officer shall thereafter proceed to have the work performed in accordance with the resolution at municipal expense, not to exceed the amount specified in the resolution, and shall, upon completion thereof, submit a report of the moneys expended and costs, whereupon the same shall become a lien against the premises, collectible as provided by law. A copy of the resolution approving the expenses and costs shall be certified by the Town Clerk and filed with the Assessor of the Town, who shall assess such expense against the record owner of the property. The charge shall be collected in the same manner and at the same time as other town charges. A copy of the report and resolution shall be sent by certified mail, return receipt requested, to the owner of the effected premises.

**§ 80 Recreational Vehicles/ Utility Trailers**

- A. Recreational vehicles/utility trailers shall not be stored in a front yard for more than seven (7) consecutive days.
- B. No recreational vehicles/utility trailers shall be erected, used, or maintained for living or residential purposes.

**§ 81 Refuse Storage Areas**

A. Refuse Storage Areas in All Residential Districts

All refuse storage, between refuse collections, shall be located in the side or rear of the buildings and not visible from the public right-of-way.

B. Non-residential Refuse Storage Areas

- (1) All refuse storage areas shall be located within the primary building or in the side or rear yard of the principal building.
- (2) Deposited refuse shall not be visible from outside the refuse enclosure.
- (3) All refuse storage areas shall be effectively designed to contain all refuse generated on site and deposited between collections.
- (4) Refuse storage areas shall conform to any the following.
  - (a) If a loading dock/service bay or vehicular garage is part of the building, refuse storage shall be contained within this area.
  - (b) If there is no loading dock service bay or vehicular garage, refuse storage shall be located within the building, accessible from the exterior and enclosed with solid door. The doors shall be integrated into the facade pattern in a manner consistent with the character of the building.
  - (c) If it is not possible to locate within the building, refuse storage shall be located within a concealed enclosure that includes solid doors, is integral to the building, consists of the same materials as the building and is located at the rear of the building, or
  - (d) If the refuse storage area is separated from the primary building, it shall be fully enclosed by a wall or fence with a gate for refuse loading or removal. It shall be constructed of material consistent with the primary building.

**§ 82 Sewage Disposal Facilities**

Sewage disposal facilities shall be subject to the following requirements:

- A. If the use of any lot or building involves the disposal of sewage or wastewater and public sewers are not available, an adequate sanitary disposal system for the same shall be installed in accordance with regulations and standards promulgated by the Department of Health and at all times maintained on such lot or in lawful connection therewith. The minimum lot area otherwise required shall be increased where necessary to the extent required to provide such disposal system. Detailed plans for such disposal system shall be submitted to the Zoning/Code Enforcement Officer and approved by him/her before a zoning permit shall be issued.

- B. The applicant shall obtain any required permits necessary from the New York State Department of Health and/or Environmental Conservation. The Zoning/Code Enforcement Officer may require the submission of any documents necessary to make the foregoing finding.
- C. No lot shall be used for the commercial storage or disposal of solid or liquid waste except, however, duly approved individual sewage disposal systems. This provision shall not prohibit the storage of animal waste upon any farm as permitted in §38 of this Law
- D. Tanks, sewerage or other disposals, including those with potentially harmful effluents, shall not be permitted to discharge, either directly or indirectly, into a road, public ditch or stream or lake.

### § 83 Signs

#### A. Purpose

The purpose of this Section is to provide standards for the regulations of the height, size, location and appearance of signs to:

- (1) Protect and enhance property values and neighborhood character;
- (2) Protect public and private investment in buildings and open spaces;
- (3) Preserve and improve the appearance of the Town of Porter as a place to live and work and as an attraction to visitors;
- (4) Encourage sound signage practices to aid business and provide information to the public;
- (5) Prevent excessive and confusing sign displays;
- (6) Reduce hazards to motorists and pedestrians;
- (7) Protect the public health, safety and general welfare.

#### B. Allowed Signs

The following are allowed in any district:

- (1) Customary holiday decorations;
- (2) One (1) prominently displayed building address sign that is pedestrian and automobile-oriented;
- (3) Family name signs, decorative flags, no trespassing and similar signs;
- (4) Traffic control signs;
- (5) No more than two (2) directional and parking signs not exceeding two (2) square feet per face and no taller than three (3) feet high per business;
- (6) Signs, flags or emblems erected and maintained pursuant to any government function;
- (7) Decorative or architectural features of a building, except letters or trademarks;
- (8) Historic plaques, markers, monuments or tablets;
- (9) Safety signs.



C. Limited Signs

The following signs are limited:

- (1) Gasoline price signs attached to a gasoline dispenser shall not exceed one (1) square foot per face for each grade of gasoline;
- (2) Election signs not exceeding six (6) square feet per side; all election signs shall be removed within two (2) calendar days following the election;
- (3) Two (2) real estate signs not exceeding six (6) square feet per side;
- (4) When permitted, one (1) non-illuminated home occupation sign not exceeding two (2) square feet in area ;
- (5) One (1) construction or renovation sign, six (6) square feet per side, erected by a contractor, engineer, architect or similar professional or business and removed at the termination of that portion of the project activity.

D. Temporary Signs

Temporary signs that conform to the following shall be allowed under the following conditions.

- (1) Temporary or portable signs shall be used for the following purposes only:
  - (a) New business enterprises;
  - (b) Businesses enterprises which have lost the use of an existing sign by reason of fire or other catastrophe; and
  - (c) Limited activities in connection with the principal use or activity.
- (2) Temporary signs may not exceed 20 square feet in size; no more than one (1) temporary sign shall be permitted per business.
- (3) Temporary signs shall be removed within 90 days and shall not be displayed within the same calendar year except for three (3) times per year, for no more than 72 hours per occasion.
- (4) Banners, pennants, ribbons, and roadside memorials may be permitted as a temporary sign.

E. Temporary signs shall comply with the location and design standards contained in this Law.

F. Permit Required

A building permit is required for all permanent signs and tourist directional signs.

G. Permitted Permanent Signs – Non-Residential Uses

District	Permitted Signs
RA	According to NYS Ag & Markets Laws.
LDR and MDR	Only signs permitted in all districts
CMU and RC	<p>A maximum of 40 square feet of signage per lot including:</p> <p>Attached signs identifying uses or services on the premises that include one half (0.5) square foot in area for every linear foot of the building frontage;</p> <p>and/or</p> <p>One (1) detached sign located in the front yard not exceeding 24 square feet in size per side of sign and posted no more than four (4) feet in height from the finished grade of the lot.</p>
IND	<p>Maximum signage area of ten (10) percent of the primary building façade per lot including:</p> <p>Attached signs identifying uses or services on the premises not exceeding 1.0 square foot for every foot of building frontage;</p> <p>and/or</p> <p>One (1) detached sign located in the front yard not exceeding 24 square feet in size per side and no more than six (6) feet high from the finished lot grade.</p>

H. Tourist Directional Sign

Tourist Directional Signs shall be permitted provided they are a maximum six (6) square feet in area and are located a minimum of 1,000 feet from another Tourist Directional Sign

I. Sign Location

- (1) No sign shall be at any location where it interferes with or obstructs the view or free passage of pedestrian or vehicular traffic and shall not be located in the public right-of-way;
- (2) No sign shall be painted, placed or constructed directly on or project from a roof;
- (3) No sign shall be attached to any tree, utility pole or be painted upon or otherwise affixed to any naturally occurring rock, ledge or other natural feature;
- (4) No detached sign shall be closer than 25 feet to a residential lot line;
- (5) Signs parallel to and attached to a building shall not be set out more than ten (10) inches from the building;
- (6) Any sign that projects from a building over the public way shall be located at least eight (8) feet above the ground.

J. Design Standards

(1) Sign Area

- (a) The area of signs composed of individual letters without a background shall include the area enclosed by a series of lines joined to form a perimeter bounding all parts of the display including all lettering, logo, graphics and trademarks.

- (b) The area of an awning or canopy that includes lettering, logo, graphics and trademarks shall be included in calculations for allowed signage;
- (2) Lighting
  - (a) No sign shall consist of strings of lights or contain blinking, flashing, intermittent, rotating, glaring, moving lights or other attention attracting devices;
  - (b) Any illuminated sign shall employ only lights emitting a light of constant intensity;
- (3) Neon Signs

Neon window signs may be permitted in cases where they are compatible with the building's use, historic and/or architectural character;
- (4) Signs and awnings should not materially obscure architectural features or details of buildings.
- (5) If more than one (1) tenant is located in a building, individual signs for each will be allowed to be attached to the building as long as the total signage square footage for the development does not exceed the maximum signage for the district.
- (6) In commercial or industrial buildings or plazas with two (2) or more occupants, a shared sign is required. Kiosk sign structures are encouraged to advertise for these multi-tenant buildings and plazas. Signage included on the kiosk shall follow the standards outlined in these regulations in terms of colors, lettering, etc.
- (7) No sign shall be movable or portable unless defined as a temporary sign.

K. Maintenance of Signs

- (1) Every sign shall at all times be maintained in a safe and structurally sound condition. Signs that do not comply with adequate safety standards shall be removed at the property owner's expense.
- (2) Signs must be regularly maintained including the replacement of worn parts, painting and cleaning.
- (3) The full number of illuminating elements of a sign shall be kept in working condition or immediately repaired or replaced.

L. Abandoned Signs

- (1) Except as otherwise provided in this Law, any sign which is located on property which becomes vacant and unoccupied for a period of three (3) months or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned;
- (2) Abandoned signs are prohibited and shall be removed by the owner of the sign or owner of the premises.

## § 84 Stormwater Management

### A. Findings:

- (1) Land development activities and associated increases in site impervious cover often alter the hydrologic response of local watersheds and increase stormwater runoff rates and volumes, flooding, stream channel erosion, or sediment transport and deposition;
- (2) This stormwater runoff contributes to increased quantities of water-borne pollutants, including siltation of aquatic habitat for fish and other desirable species;
- (3) Clearing and grading during construction tends to increase soil erosion and add to the loss of native vegetation necessary for terrestrial and aquatic habitat;
- (4) Improper design and construction of stormwater management practices can increase the velocity of stormwater runoff thereby increasing stream bank erosion and sedimentation;
- (5) Impervious surfaces allow less water to percolate into the soil, thereby decreasing groundwater recharge and stream baseflow;
- (6) Substantial economic losses can result from these adverse impacts on the waters of the Town.
- (7) Stormwater runoff, soil erosion, and nonpoint source pollution can be controlled and minimized through the regulation of stormwater runoff from land development activities;
- (8) The regulation of stormwater runoff discharges from land development activities in order to control and minimize increases in stormwater runoff rates and volumes, soil erosion, stream channel erosion, and nonpoint source pollution associated with stormwater runoff is in the public interest and will minimize threats to public health and safety; and
- (9) Regulation of land development activities by means of performance standards governing stormwater management and site design will produce development compatibility with the natural functions of a particular site or an entire watershed and thereby mitigates the adverse effects of erosion and sedimentation from development.

### B. Purpose

The purpose of this Section is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing within this jurisdiction and to address the findings of fact in §84(A). This Section seeks to meet those purposes by achieving the following objectives:

- (1) Meet the requirements of minimum measures 4 and 5 of the New York State Department of Environmental Conservation State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-02, or as amended or revised;

- (2) Require land development activities to conform to substantive requirements of the NYS DEC State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Municipal Separate Stormwater Sewer Systems (MS4s), Permit No. GP-02-01, or as amended or revised;
- (3) Minimize increases in stormwater runoff from land development activities in order to reduce flooding, siltation, increases in stream temperature, and stream bank erosion and maintain the integrity of stream channels;
- (4) Minimize increases in pollution caused by stormwater runoff from land development activities which would otherwise degrade local water quality;
- (5) Minimize the total annual volume of stormwater runoff which flows from any specific site during and following development to the maximum extent practicable; and
- (6) Reduce stormwater runoff rates and volumes, soil erosion, and nonpoint source pollution, wherever possible, through stormwater management practices and ensure that these management practices are properly maintained and eliminate threats to public safety.

C. General Provisions

(1) Applicability

This Section shall be applicable to all land development activities.

(2) Exemptions

The following activities shall be exempt from review under this Section

- (a) Agricultural activity;
- (b) Silviculture activity except that landing areas and log haul roads are subject to this Section;
- (c) Routine maintenance activities that disturb less than five (5) acres and are performed to maintain the original line and grade, hydraulic capacity or original purpose of the facility;
- (d) Repairs to any stormwater management practice or facility deemed necessary by the Stormwater Management Officer (SMO);
- (e) Any part of a subdivision if a plat for the subdivision has been approved on or before the effective date of this Chapter;
- (f) Land development activities for which a building permit has been approved on or before the effective date of this Chapter;
- (g) Cemetery graves
- (h) Installation of fence, sign, telephone and electric poles and other kind of posts or poles;
- (i) Emergency activity immediately necessary to protect life, property and natural resources;
- (j) Activities of an individual engaging in home gardening by growing flowers, vegetables or other plants primarily for use by that person and his or her family; and

- (k) Landscaping and horticultural activities in connection with an existing structure.

(3) Conflict

Where the conditions imposed by any provision of this Section are either more restrictive or less restrictive than the comparable conditions imposed by any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

D. Procedure

The procedures applicable to all construction activities subject to review under this Section are as follows:

- (1) The Town of Porter shall designate an SMO who shall accept and review all Stormwater Pollution Prevention Plans (SWPPPs). The SMO may:
  - (a) Review the SWPPPs;
  - (b) Upon approval by the Town Board, engage the services of a registered professional engineer to review the SWPPPs, specifications and related documents at the cost not to exceed a fee schedule established by the Town Board; or
  - (c) Accept the certification of a licensed professional that the SWPPPs comply with the requirements of this Section.
- (2) For all development activities subject to review and approval by the Zoning Administrator, Planning Board, Town Board, or Board of Appeals of the Town of Porter under subdivision, site plan, automobile access area, or mobile home park regulations, the applicant or developer shall submit a SWPPP that complies with the requirements of this Section to the SMO, and the land development activity shall be reviewed subject to the standards contained in this Section.

(a) Initial Review by SMO

Within 45 days of receipt of a SWPPP, the SMO shall forward the SWPPP, together with his or her written recommendations to approve, approve with modifications, or disapprove the SWPPP, to such employee, officer, or board of the Town of Porter which is reviewing an application for approval of a land development activity requiring submission of a SWPPP. A recommendation of approval shall only be given if the SWPPP complies with the requirements of this Section. In making a recommendation to approve with modification or disapprove the SWPPP, the SMO shall state the reasons for the decision in writing.

(3) Review by Final Reviewing Body

- (a) The employee, officer, or board of the Town of Porter reviewing the application for approval of a land development activity shall review the SWPPP and the recommendation of the SMO and shall act to approve, approve with modifications, or disapprove the SWPPP. Such reviewing body shall not act to approve the SWPPP unless it complies with the requirements of this Section. If the reviewing body acts to approve with modification or disapprove the SWPPP, the reasons for the decision shall be stated in writing. In order to be approved, the applicant shall revise a SWPPP that has been approved with modifications or disapproved with the recommendations of the reviewing body and shall submit the revised SWPPP to such body for review.
- (b) For all land development activities not subject to review as provided in §84(D)(2), the applicant or developer shall be required to submit a SWPPP prepared in accordance with the standards contained in this Section to the SMO. Within 45 days of the receipt of the SWPPP, the SMO shall approve, approve with modifications, or disapprove the SWPPP. Approval shall only be given if the SWPPP complies with the requirements of this Section. In approving with modification or disapproving the SWPPP, the SMO shall state the reasons for the decision in writing. In order to be approved, the applicant shall revise a SWPPP that has been approved with modifications or disapproved with the recommendations of the SMO and shall submit the revised SWPPP to the SMO for review.

E. Stormwater Pollution Prevention Plans

(1) Contents of Stormwater Pollution Prevention Plans

- (a) All SWPPPs shall provide the following background information and erosion and sediment controls:
  - (i) Background information about the scope of the project, including location, type and size of project;
  - (ii) Site map/construction drawing(s) for the project, including a general location map. The site map shall be at a scale no smaller than one (1) inch equals 100 feet. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges(s);
  - (iii) Description of the soil(s) present at the site;

- (iv) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one (1) time unless pursuant to an approved SWPPP;
- (v) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff;
- (vi) Description of construction and waste materials expected to be stored onsite with updates as appropriate, and a description of controls to reduce pollutants from these materials, including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response;
- (vii) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project, from initial land clearing and grubbing to project close-out;
- (viii) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice;
- (ix) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins;
- (x) Temporary practices that will be converted to permanent control measures;
- (xi) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place;
- (xii) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice;
- (xiii) Name(s) of the receiving water(s);
- (xiv) Delineation of SWPPP implementation responsibilities for each part of the site;
- (xv) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable; and
- (xvi) Any existing data that describes the stormwater runoff at the site.



- (b) Land development activities meeting Condition A, B or C below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth in Subsection E(1)(c) below as applicable:
  - (i) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the DEC's 303(d) list of impaired waters or a total maximum daily load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.
  - (ii) Condition B: Stormwater runoff from land development activities disturbing five (5) or more acres.
  - (iii) Condition C: Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single-family residences and construction activities at agricultural properties.
- (c) SWPPP requirements for Conditions A, B and C: (post-construction stormwater runoff controls)
  - (i) All information in §84(E)(1)(a);
  - (ii) Description of each post construction stormwater management practice;
  - (iii) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post construction stormwater management practice;
  - (iv) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms;
  - (v) Comparison of post development stormwater runoff conditions with predevelopment conditions;
  - (vi) Dimensions, material specifications and installation details for each post construction stormwater management practice;
  - (vii) Maintenance schedule to ensure continuous and effective operation of each post construction stormwater management practice;
  - (viii) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easements shall be recorded on the plan and shall remain in effect with transfer of title to the property;
  - (ix) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with §84(G);

(2) Other Environmental Permits.

The applicant shall assure that all other applicable environmental permits have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

(3) Contractor Certification

(a) Each contractor and subcontractor identified in the SWPPP who will be involved in oil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards."

(b) The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

(c) The certification statement(s) shall become part of the SWPPP for the land development activity.

(4) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

F. Performance and Design Criteria for Stormwater Management and Erosion and Sediment Control

All land development activities shall be subject to the following performance and design criteria:

(1) Technical Standards.

For the purpose of this Section, the following documents shall serve as the official guides and specifications for stormwater management. Stormwater management practices that are designed and constructed in accordance with these technical documents shall be presumed to meet the standards imposed by this Section:

(a) *The New York State Stormwater Management Design Manual* (New York State Department of Environmental Conservation, most current version or its successor, hereafter referred to as the "Design Manual");

(b) *New York Standards and Specifications for Erosion and Sediment Control* (Empire State Chapter of the Soil and Water Conservation Society, 2004, most current version or its successor, hereafter referred to as the "Erosion Control Manual").

(2) Equivalence to Technical Standards.

Where stormwater management practices are not in accordance with technical standards, the applicant or developer must demonstrate equivalence to the technical standards set forth in Subsection A and the SWPPP shall be prepared by a licensed professional.

(3) Water Quality Standards

Any land development activity shall not cause an increase in turbidity that will result in substantial visible contrast to natural conditions in surface waters of the State of New York.

G. Maintenance, Inspection and Repair of Stormwater Facilities

(1) Maintenance and Inspection During Construction

- (a) The applicant or developer of the land development activity or their representative shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the applicant or developer to achieve compliance with the conditions of this Section. Sediment shall be removed from sediment traps or sediment ponds whenever their design capacity has been reduced by 50%
- (b) For land development activities meeting Condition A, B or C in §84(E)(1)(b), the applicant shall have a qualified professional conduct site inspections and document the effectiveness of all erosion and sediment control practices every seven (7) days and within 24 hours of any storm event producing one half (0.5) inch of precipitation or more. Inspection reports shall be maintained in a site logbook.

(2) Maintenance Easement(s)

Prior to the issuance of any approval that has a stormwater management facility as one (1) of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at reasonable times for periodic inspection by the Town of Porter to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this Section. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the counsel for the Town of Porter.

(3) Maintenance after Construction.

The owner or operator of permanent stormwater management practices, installed in accordance with this Section, shall ensure they are operated and maintained to achieve the goals of this Section. Proper operation and maintenance also includes, as a minimum, the following:

- (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this Section
- (b) Written procedures for operation and maintenance and training new maintenance personnel.
- (c) Discharges from the Stormwater Management Practices (SMPs) shall not exceed design criteria or cause or contribute to water quality standard violations in accordance with §84(F).

(d) Maintenance Agreements.

The Town of Porter shall approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of the "Sample Stormwater Control Facility Maintenance Agreement", contained in Appendix 1. The Town of Porter, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this Section, and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

H. Administration & Enforcement

(1) Construction Inspection

(a) Erosion and Sediment Control Inspection

The SMO may require such inspections as necessary to determine compliance with this Section and may either approve that portion of the work completed or notify the applicant wherein the work fails to comply with the requirements of this Section and SWPPP as approved. To obtain inspections, the applicant shall notify the Village enforcement official at least 48 hours before any of the following as required by the SMO:

- (i) Start of Construction;
- (ii) Installation of sediment and erosion control measures;
- (iii) Completion of site clearing;
- (iv) Completion of rough grading;
- (v) Completion of final grading;
- (vi) Close of the construction season;
- (vii) Completion of final landscaping;
- (viii) Successful establishment of landscaping in public areas.

If any violations are found, the applicant and developer shall be notified in writing of the nature of the violation and the required corrective actions. No further work shall be conducted except for site stabilization until any violations are corrected and all work previously completed has received approval by the SMO.

(b) Stormwater Management Practice Inspections

The SMO is responsible for conducting inspections of SMPs. All applicants are required to submit "as built" plans for any SMPs located on-site after final construction is completed. The plan must show the final design specifications for all stormwater management facilities and must be certified by a licensed professional engineer.

(c) Inspection of Stormwater Facilities after Project Completion

Inspection programs shall be established on any reasonable basis, including but not limited to: routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; inspection of drainage basins or areas identified as higher than typical sources of sediment or other contaminants or pollutants; inspections of businesses or industries of a type associated with higher than usual discharges of contaminants or pollutants or with discharges of a type which are more likely than the typical discharge to cause violations of state or federal water or sediment quality standards or the SPDES stormwater permit; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to: reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in drainage control facilities; and evaluating the condition of drainage control facilities and other stormwater management practices.

(d) Submission of Reports

The SMO may require monitoring and reporting from entities subject to this chapter as are necessary to determine compliance with this Section.

(e) Right-of-Entry for Inspection

When any new stormwater management facility is installed on private property or when any new connection is made between private property and the public storm water system, the landowner shall grant to the Town the right to enter the property at reasonable times and in a reasonable manner for the purpose of inspection as specified in §84H(1)[c].

(2) Performance Guarantee

(a) Construction Completion Guarantee

In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the Town of Porter in its approval of the SWPPP, the Town of Porter may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the Town of Porter as the beneficiary. The security shall be in an amount to be determined by the Board of Trustees based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the Town of Porter, provided that such period shall not be less than one (1) year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one (1) year inspection has been conducted and the facilities have been found to be acceptable to the Town of Porter. Per annum interest on cash escrow deposits shall be reinvested in the account until the surety is released from liability.

(b) Maintenance Guarantee

Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer, or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required to provide the Town of Porter with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the Town of Porter may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs.

(c) Record Keeping

The Town of Porter may require entities subject to this Section to maintain records demonstrating compliance with this Section.

(3) Enforcement and Penalties

(a) Notice of Violation

When the Town of Porter determines that a land development activity is not being carried out in accordance with the requirements of this Section, he may issue a written notice of violation to the landowner. The notice of violation shall contain:

- (i) The name and address of the landowner, developer or applicant;
- (ii) The address when available or a description of the building, structure or land upon which the violation is occurring;
- (iii) A statement specifying the nature of the violation;
- (iv) A description of the remedial measures necessary to bring the land development activity into compliance with this Section and a time schedule for the completion of such remedial action;
- (v) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (vi) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation.

(b) Stop Work Orders

The Town of Porter may issue a stop work order for violations of this law. Persons receiving a stop work order shall be required to halt all land development activities, except those activities that address the violations leading to the stop work order. The stop work order shall be in effect until the Town of Porter confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to address a stop work order in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this Section.

(c) Violations

Any land development activity that is commenced or is conducted contrary to this Section, may be restrained by injunction or otherwise abated in a manner provided by law.

(d) Penalties

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by a fine not exceeding \$350 or imprisonment for a period not to exceed six (6) months, or both, for conviction of a first offense; for conviction of a second offense both of which were committed within a period of five (5) years, punishable by a fine not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six (6) months, or both; and upon conviction for a third or subsequent offense all of which were committed within a period of five (5) years, punishable by a fine not less than \$700 nor more than \$1,000 or imprisonment for a period not to exceed six (6) months, or both. However, for the purpose of conferring jurisdiction upon courts and judicial officials generally, violations of this Section shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate violation.

(e) Withholding of Certificate of Occupancy

If any building or land development activity is installed or conducted in violation of this Section the SMO may prevent the occupancy of said building or land.

(f) Restoration of Lands

Any violator may be required to restore land to its undisturbed condition. In the event that restoration is not undertaken within a reasonable time after notice, the Town of Porter may take necessary corrective action, the cost of which shall become a lien upon the property until paid.

(4) Fees for Service

The Town of Porter may require any person undertaking land development activities regulated by this Section to pay a fee, as set by the Town Board from time to time, for review of SWPPPs, inspections, or SMP maintenance performed by the Town of Porter or performed by a third party for the Town of Porter.

**§ 85 Unsafe Building Repair or Removal**

**A. Title and Purpose**

To allow the Town Board to direct that an inspection and report be undertaken by the Code Enforcement Officer regarding the condition and need for repair and removal of any building(s) in commercial, industrial, and residential areas that, from any cause, may now be or shall hereafter become dangerous or unsafe to the public.

**B. Serving of Notice**

- (1) Upon a report being made pursuant to subsection A, written notice shall be served upon the owner or someone of the owners executors, legal representative, agents, lessees or any other person having a vested or contingent interest in same, either personally or by registered mail, addressed to the last known address, if any, as shown by the records of the receiver of taxes and or in the office of the County Clerk or County Register. If such service is made by registered mail, a copy of such notice shall be posted on the premises. The written notice shall contain a description of the premise, a statement of the particulars in which the building or structure is unsafe or dangerous and an order requiring same to be made safe and secure or removed.
- (2) A copy of the notice given pursuant to Subsection B(1) herein shall be filed in the Office of the Niagara County Clerk, which notice shall be filed by the Clerk in the same manner as a notice of pendency pursuant to Article 65 of the Civil Practice Law and Rules, and shall have the same effect as a notice of pendency as therein provided, except as otherwise hereinafter provided in this paragraph. A notice so filed shall be effective for a period of one (1) year from the date of filing, provided, however, that it may be vacated upon the order of a judge or justice of a court of record or upon consent of the Town Attorney. The County Clerk where such notice is filed shall mark such notice and any record or docket thereof as cancelled of record upon the presentation and filing of such consent or a certified copy of such order.

**C. Action by Owner**

Upon being served such notice, the owner or someone of the owner's executors, legal representatives, agents, lessees or other person having a vested or contingent interest in same shall have 30 days within which to commence the securing or removal of the buildings or structures.

**D. Hearing**

A hearing before the Town Board, notice of which and the time and place thereof to be specified in the notice to repair or demolish, shall be served upon the owner and such persons having an interest in the property or structure as herein prescribed at which time such owner or persons may appear and be heard regarding the condition of such property or structure.

**E. Action by Town to Remedy**

The Town Board may direct that such building or structure be removed by the Town in the event such owner fails or refuses to repair or remove the same within the time provided.



F. Cost and Expense

All costs and expense incurred by the Town in connection with the proceedings to remove or secure, including the cost of actually removing said building or structure, shall be assessed against the land on which said buildings or structures are located.

§ 86 Reserved

§ 87 Reserved

§ 88 Reserved

§ 89 Reserved



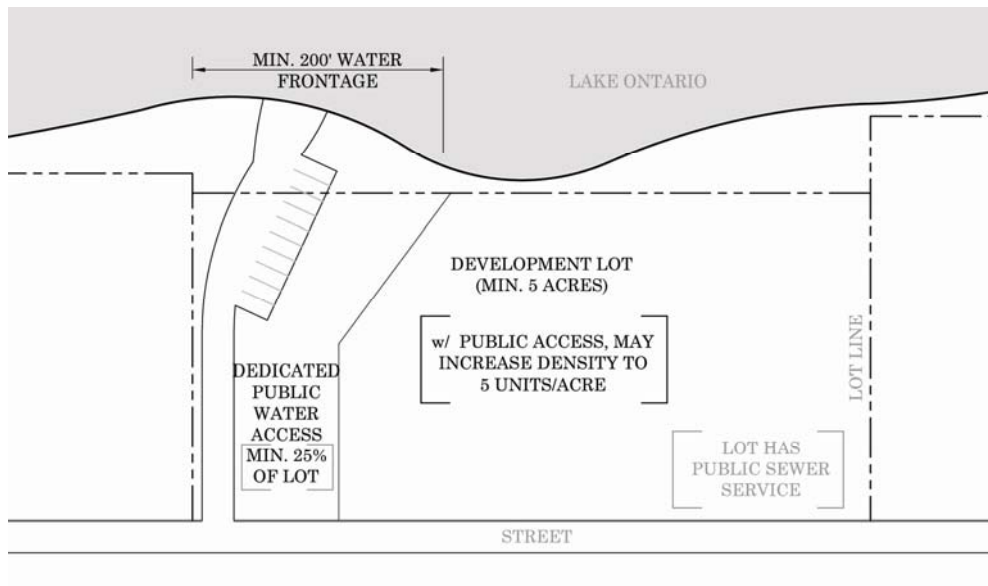
## Article VI. Incentives

### § 90 Purpose

The Purpose of this Section is to provide property owners with greater development opportunities in exchange for concessions or amenities desired by the Town through the Town's Comprehensive Plan. The Town Board shall be responsible for approving an incentive development pursuant to Town Law 261-b and accepting dedication of the open space.

### § 91 Waterfront Access

A development on at least five (5) acres of land adjacent to the waterfront and that dedicates 25% of the land to the Town for public access, and which such area has at least 200 feet of water frontage, may increase the density of their development to five (5) units per acre of the entire lot. Minimum lot area shall not apply and setback requirements may be waived. This incentive is only available for lots that are served by public sewer.



### § 92 Reserved

### § 93 Reserved

### § 94 Reserved



## Article VII. Review Authorities

### § 95 Responsibility for Administration

Direct responsibility for the administration and enforcement of the provisions of this Law shall be vested in the Zoning/Code Enforcement Officer, Town Board, Planning Board and Zoning Board of Appeals, all in accordance with the provisions of this Article.

### § 96 Town Board

#### A. Powers and Duties

In addition to the jurisdiction conferred on it by other provisions of the regulations of the Town, the Town Board shall have the following powers and duties.

##### (1) Text Amendments

The Town Board shall be responsible for reviewing Zoning Law text amendment applications and for taking final action to approve, approve with modifications or deny such applications.

##### (2) Map Amendments

The Town Board shall be responsible for reviewing map amendment (rezoning) applications and for taking final action to approve, approve with conditions or deny such applications.

##### (3) Senior Housing District

The Town Board shall be responsible for reviewing and deciding on applications for Senior Housing Districts.

##### (4) Incentive Developments

The Town Board shall be responsible for approving developments that have used an incentive option presented in Article VI.

### § 97 Planning Board

#### A. Jurisdiction and Authority

The Planning Board shall have the following jurisdiction and authority:

- (1) To hear, review and decide on applications for Site Plan approval.
- (2) To hear, review and decide on applications for Special Permit approval.
- (3) To hear, review and decide on applications for subdivision approval.
- (4) To hear, review and decide on applications for cluster developments in conjunction with subdivision approval
- (5) To review and recommend on matters relevant to the Comprehensive Plan.
- (6) To hear, review and offer its recommendations to the Town Board on applications for Senior Housing Districts.

B. Membership

(1) Appointment and Terms

The Town Board shall appoint a Planning Board consisting of five (5) regular members, who shall serve terms of five (5) years and one (1) alternate member for the term of three (3) years. Said members are hereby vested with powers and duties and made subject to the limitations set forth in the Town Law, as the same may be amended, modified or changed from time to time.

(2) Board Composition

Members of the Planning Board shall be U.S. citizens, residents of the Town of Porter and shall not be officers or employees of the Town or any of its agencies or departments. At least one member of the board shall be from the agricultural community, meeting the criteria set in the Town Law.

(3) Compensation

Members of the Planning Board shall serve with compensation as determined by the Town Board and shall be entitled, to the extent of available funds appropriated, to reimbursement for reasonable expenses necessarily incurred in the performance of their duties.

(4) Vacancies

Permanent vacancies on the Planning Board shall be filled by the Town Board. When a vacancy occurs, an advertisement shall be issued in a newspaper of local circulation seeking out interested parties to fill the position.

(5) Mandatory Training

The members of the Planning Board shall be required to attend at least eight (8) hours of training regarding land use issues during their first year on the Board. For each subsequent year, the Planning Board members shall be required to attend four (4) hours of training. All training shall be relevant to the member's powers or duties on the Planning Board and sponsored by the New York Association of Towns, New York Planning Federation, State of New York or any political subdivision thereof, or any session approved by the Planning Board Chairperson.

(6) Removal

Any member of the Planning Board may be removed for cause by the Town Board at any time, provided, however, that before any such removal, such member shall be given an opportunity to respond to allegations of such cause in writing to the Town Board. Cause for removal of a member shall include:

- (a) Any undisclosed or unlawful conflict of interest;
- (b) Any violation of the codes, ordinances or rules applicable to the member's performance of their duties
- (c) Any unwillingness or inability to carry out their duties in a prompt, conscientious and competent manner;

- (d) Any conduct tending to cast doubt upon the integrity or objectivity of the member in performing their duties or any other specific conduct of the member found by the Town Board to be detrimental to the proper functioning of the Board;
  - (e) Members may be removed from the Planning Board if they miss 33% of the meetings during the course of one (1) calendar year, miss three (3) consecutive meetings or do not meet their mandatory training requirements.
  - (f) No member that has been removed for cause shall be reappointed.
- C. Chairperson and Vice Chairperson
  - (1) The Town Board shall annually appoint one (1) of the members of the Planning Board as Chairperson, to preside at all meetings and hearings and to fulfill the customary functions of that office. The members of the Planning Board shall annually elect one (1) of their members as Vice-Chairperson.
  - (2) In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson and shall have all the powers of the Chairperson. The Vice Chairperson shall have such other powers and duties as may from time to time be provided by the rules of the Planning Board.
  - (3) A person shall not serve as Chairperson or Vice Chairperson for more than five (5) consecutive years. A person appointed as Chairperson or Vice Chairperson must have served on the Board for a period of at least five (5) years prior to appointment.
- D. Planning Board Secretary and Public Record
  - (1) The Planning Board Secretary shall attend all its proceedings and, upon request, the proceedings of any of its Committees.
  - (2) The Secretary shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall maintain all state-mandated permanent records of Board meetings, hearings and proceedings and all correspondence of the Board. The Secretary shall provide for keeping a file of all records of the Board, and such records shall be public records open to inspection at reasonable times and upon reasonable notice.
- E. Voting Procedures
  - (1) Quorum
    - (a) As to any matter requiring a hearing before the Planning Board, no business shall be transacted by the Board without a quorum. The concurring vote of three (3) members shall be necessary for any action by the Board. If less than a quorum is present, the hearing may be adjourned to the next scheduled meeting or to a special meeting as determined by the Board. The Secretary shall notify, in writing, all members of the date of the adjourned hearing and shall also notify such other interested parties as may be designated in the vote of adjournment.

- (b) A member absent from any portion of a hearing or meeting shall be qualified to vote at a subsequent hearing or meeting upon the matter heard provided they shall first certify on the record that they have reviewed the entire record of any such portion of the hearing or meeting during which they were absent and have fully informed themselves of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.

(2) Deliberation

As to any matter not requiring a hearing, the Planning Board may meet and deliberate at any properly called meeting regardless of the presence of a quorum or may continue consideration of such matter to any later meeting. However, no final action shall be taken on any such matter without a quorum.

F. Meetings, Hearings and Rules of Order

(1) Meetings

Regular meetings of the Planning Board shall be held at the call of the Chairperson or as provided by rule of the Board. Special meetings shall be called by the Chairperson at the request of any three (3) members of the Board or at the request of the Town Board. The Pledge of Allegiance shall commence meetings.

(2) Hearings

All meetings and hearings of the Planning Board shall be open to the public.

(3) Rules of Order

The Planning Board shall follow Robert's Rules of Order for parliamentary guide for all meetings of the board. Said rules of order shall consist of roll call, public participation, approval of minutes, communications, old business, new business, report of Committees or assigned delegates and miscellaneous matters.

G. Planning Board By-laws

The Planning Board shall prepare and adopt by-laws from time to time outlining meeting times and related procedures.

H. Record and Decisions

(1) Record

The following shall constitute the record:

- (a) The transcript of testimony, if any;
- (b) The minutes of the Secretary;
- (c) All applications, reports, requests, exhibits and papers filed in any proceeding before the Planning Board; and
- (d) The decision of the Board.



(2) Decisions

- (a) The Planning Board may rely on the personal knowledge of its members, testimony during public hearings, on its inspections of the property and on any reports available to it, provided that reliance on such matter shall not be allowed unless the Board shall have made the particular knowledge, inspection or report a matter of record at the public hearing and afforded every party reasonable time to respond to it.
- (b) Every decision of the Planning Board upon an application amending this Law, for site plan approval or special use permit shall be by written resolution which shall set forth the recommendation of the Board or shall approve, approve with conditions or deny approval. Every resolution shall expressly set forth any limitations or conditions imposed on any approval or any development, work or use authorized.

(3) Notification of Decision

Within five (5) business days following any decision on such applications, the Secretary shall mail notice thereof to each person entitled to such notice and file such decision in the office of the Town Clerk. As to other matters brought before the Board, the Board shall prepare such report as it shall deem appropriate to the subject matter.

I. Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which they have an interest. Any conflict of interest prohibited by Article 18 of the General Municipal Law shall disqualify a member.

J. Appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken within 90 days of the filing of such decision by any person aggrieved or by any authorized officer, department or board of the Town.

**§ 98 Zoning Board of Appeals**

A. Jurisdiction and Authority

The Zoning Board of Appeals shall have the following jurisdiction and authority:

- (1) To hear and decide appeals from, and review orders, decisions or determinations made by the Zoning/Code Enforcement Officer or the Planning Board.
- (2) To approve or deny Variances from the requirements of this Law.

B. Membership

(1) Appointment and Terms

Members of the Zoning Board of Appeals shall be appointed by the Town Board. The Zoning Board of Appeals shall consist of five (5) regular members each serving terms of five (5) years and one (1) alternate member, who shall serve for a term of three (3) years.

(2) Board Composition

Members of the Zoning of Appeals shall be U.S. citizens, residents of the Town of Porter and shall not be officers or employees of the Town or any of its agencies or departments. At least one (1) member of the board shall be from the agricultural community, meeting the criteria set in the Town Law.

(3) Compensation

Members of the Zoning Board of Appeals shall serve with compensation as determined by the Town Board and shall be entitled, to the extent of available funds appropriated, to reimbursement for reasonable expenses necessarily incurred in the performance of their duties.

(4) Vacancies

Permanent vacancies on the Zoning Board of Appeals shall be filled by the Town Board. When a vacancy occurs, an advertisement shall be issued in a newspaper of local circulation seeking out interested parties to fill the position.

(5) Mandatory Training

The members of the Zoning Board of Appeals shall be required to attend at least eight (8) hours of training regarding land use issues during their first year on the Board. For each subsequent year, the Zoning Board members shall be required to attend four (4) hours of training. All training shall be relevant to the member's powers or duties on the Zoning Board of Appeals and sponsored by the New York Association of Towns, New York Planning Federation, State of New York or any political subdivision thereof, or any session approved by the Zoning Board Chairperson.

(6) Removal

Any member of the Zoning Board of Appeals may be removed for cause by the Town Board at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in their own defense at a public hearing. Cause for removal of a member shall include:

- (a) Any undisclosed or unlawful conflict of interest;
- (b) Any violation of the codes, ordinances or rules applicable to the member's performance of their duties;
- (c) Any unwillingness or inability to carry out their duties in a prompt, conscientious and competent manner;
- (d) Any conduct tending to cast doubt upon the integrity or objectivity of the member in performing their duties or any other specific conduct of the member found by the Town Board to be detrimental to the proper functioning of the Board.
- (e) Members may be removed from the Zoning Board of Appeals if they miss 33% of the meetings during the course of one (1) calendar year, miss three (3) consecutive meetings or do not meet their mandatory training requirements.
- (f) No member that has been removed for cause shall be reappointed.

C. Chairperson and Vice Chairperson

- (1) The Town Board shall annually appoint one (1) of the members of the Zoning Board of Appeals as Chairperson, to preside at all meetings and hearings and to fulfill the customary functions of that office. The members of the Zoning Board of Appeals shall annually elect one (1) of their members as Vice-Chairperson.
- (2) In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson and shall have all the powers of the Chairperson. The Vice Chairperson shall have such other powers and duties as may from time to time be provided by the rules of the Board.
- (3) A person shall not serve as Chairperson or Vice Chairperson for more than five (5) consecutive years. A person appointed as Chairperson or Vice Chairperson must have served on the Board for a period of at least five (5) years prior to appointment.

D. Secretary and Public Record

- (1) The Secretary of the Zoning Board of Appeals shall attend all its proceedings and, upon request, the proceedings of any of its Committees.
- (2) The Secretary shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall maintain all state-mandated permanent records of Board meetings, hearings and proceedings and all correspondence of the Board. The Secretary shall provide for keeping a file of all records of the Board, and such records shall be public records open to inspection at reasonable times and upon reasonable notice.

E. Voting Procedures

- (1) As to any matter requiring a hearing before the Zoning Board of Appeals, no business shall be transacted by the Board without a quorum. The concurring vote of three (3) members shall be necessary for any action by the Board. If less than a quorum is present, the hearing may be adjourned to the next scheduled meeting or to a special meeting as determined by the Board. The Secretary shall notify in writing all members of the date of the adjourned hearing and shall also notify such other interested parties as may be designated in the vote of adjournment.
- (2) A member absent from any portion of a hearing or meeting shall be qualified to vote at a subsequent hearing or meeting upon the matter heard provided they shall first certify on the record that they have reviewed the entire record of any such portion of the hearing or meeting during which they were absent and have fully informed themselves of the essential facts and issues of the matter being heard so as to be able to cast an informed and independent vote.

F. Meetings, Hearings and Rules of Order

(1) Meetings

Regular meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson or as provided by rule of the Board. Special meetings shall be called by the Chairperson. The Pledge of Allegiance shall commence meetings.

(2) Hearings

All meetings and hearings of the Zoning Board of Appeals shall be open to the public.

(3) Rules of Order

The Zoning Board of Appeals shall follow Robert's Rules of Order for parliamentary guide for all meetings of the Board. Said rules of order shall consist of roll call, public participation, approval of minutes, communications, old business, new business, report of Committees or assigned delegates and miscellaneous matters.

G. Zoning Board of Appeals By-laws

The Zoning Board of Appeals shall prepare and adopt by-laws from time to time outlining meeting times and related procedures.

H. Record and Decisions

(1) Record

The following shall constitute the record:

- (a) The transcript of testimony, if any;
- (b) The minutes of the Secretary;
- (c) All applications, reports, requests, exhibits and papers filed in any proceeding before the Zoning Board of Appeals; and
- (d) The decision of the Board.

(2) Decisions

- (a) The Board may rely on the personal knowledge of its members, testimony at the public hearing, on its inspections of the property and on any reports available to it, provided, however, that reliance on such matter shall not be allowed unless the Board shall have made the particular knowledge, inspection or report a matter of record at the public hearing and afforded every party reasonable time to respond to it.
- (b) Every decision of the Zoning Board of Appeals shall be by resolution and shall expressly set forth any limitations or conditions imposed on any relief approved or work or use authorized.

(3) Final Action

In taking final action, the Zoning Board of Appeals shall first state its findings and conclusions at a meeting open to the public and shall, in addition, state the special circumstances warranting such action.

(4) Failure to Act

- (a) In any case where this Law provides that the failure of the Zoning Board of Appeals to act within a fixed period shall be deemed a denial of an application, such failure shall, notwithstanding the absence of required findings and conclusions, be considered to be a decision of the Board rendered on the day following the expiration of such fixed period. Such a decision may be appealed in the same manner as any other decision but, on such appeal, shall be entitled to no presumption of correctness.
- (b) Where no decision is made by the Zoning Board of Appeals and the time period for rendering a decision has not expired, the action will be placed on the agenda of the next scheduled regular or special meeting.

(5) Notification of Decision

Within five (5) business days following any decision of the Zoning Board of Appeals, the Secretary shall mail notice thereof to each person entitled to such notice and file such decision in the office of the Town Clerk. As to other matters brought before the Board, the Board shall prepare such report as it shall deem appropriate to the subject matter.

I. Conflicts

No member of the Zoning Board of Appeals shall participate in the hearing or disposition of any matter in which they are interested. Any conflict of interest prohibited by Article 18 of the General Municipal Law shall disqualify a member.

J. Appeals

An appeal from any final decision of the Zoning Board of Appeals may be taken within 90 days of the filing of such decision by any person aggrieved or by any authorized officer, department or board of the Town.

**§ 99 Zoning/Code Enforcement Officer**

A. Appointment

Zoning/Code Enforcement Officer shall be appointed by the Town Board

B. Powers and Duties

The provisions of this chapter shall be enforced by the Zoning/Code Enforcement Officer, who shall have the following powers and duties:

- (1) Submit a monthly report to the Town Board. Copies of this report shall be transmitted to the Board of Appeals and Planning Board at the same time.
- (2) Maintain a permanent and current record of all applications for Zoning, Site Plan and Special Permits certificates, actions upon same, any conditions relating thereto, and any other matters considered and action taken. Such records shall form a part of the records of the office and shall be available for use by Town officials and for inspection by the public.
- (3) Cause any plans, buildings or premises to be examined or inspected to determine compliance with the provisions of this Law. In the fulfillment of these duties, the Zoning/Code Enforcement Officer shall be authorized to enter any premise or building during business hours to determine whether or not the same is in violation of this Law.

- (4) Issue Building Permits to all applicants who fully comply with the provisions of this Law.
- (5) Issue Change of Use Permits to all applicants who fully comply with the provisions of this Law.
- (6) Issue Temporary Use Permits to all applicants who fully comply with the provisions of this Law.
- (7) Issue Certificates of Occupancy upon finding that construction was carried out in compliance with approved plans and all other applicable codes.
- (8) Provide the Zoning Board of Appeals, in writing, with all facts pertaining to the refusal to issue permits and certificates when such information is requested by the Board.
- (9) For denied building permits provide, in writing, the specific reasons for denial and instruct the applicant on the proper methods to apply for relief.
- (10) Issue Certificates of Non-conformity and maintain a current list and/or a map of nonconforming uses to determine if discontinuance or destruction, or change in use or vacancy has taken place.
- (11) Maintain a current list and/or a map showing the Variances or Special Permits issued by the Zoning Board of Appeals to determine if the conditions and safeguards placed on Variances and Special Permits are being complied with.
- (12) For violations of this Law:
  - (a) Notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action to correct it.
  - (b) Order discontinuance of illegal uses of land, buildings or structures; removal of illegal buildings or structures, or of illegal additions, alterations or structural changes; stop work or discontinuance of any illegal work being done; or
  - (c) Take any other action authorized by this Law to ensure compliance with or to prevent violation of its provisions.

C. Mandatory Training

The Zoning/Code Enforcement Officer shall be required to attend at least 24 hours of training regarding land use issues and building code enforcement each year. All training shall be relevant to the Zoning/Code Enforcement Officer's powers or duties and sponsored by the New York Association of Towns, New York Planning Federation, or the State of New York.

## Article VIII. Procedures

### § 100 Common Review Procedures

#### A. Application Procedure

##### (1) Initiation of Application

A property owner, or its duly authorized agent, or other persons having a contractual interest shall make an application required under this Law for the subject property.

##### (2) Compliance Required

(a) No application for Site Plan Review, Planned Unit Development, Special Permit and Variances shall be considered where there are existing violations or delinquent real estate Town taxes assessed against the subject property, except where such application is intended to cure the violations. The Zoning/Code Enforcement Officer shall be responsible for accessing all records in order to make this determination.

(b) Additionally, proof that all local, state and federal regulations and permits have been complied with or obtained shall be submitted as part of the application.

##### (3) Simultaneous Processing

Whenever two (2) or more forms of review and approval are required under this Law, applications for those development approvals may be processed simultaneously.

##### (4) Application Forms and Application Filing Fees

Applications required under this Article shall be submitted in a form and in such numbers as required by the Zoning/Code Enforcement Officer. Applications shall be accompanied by the fee amount that shall be established by the Town Board from time to time. Application fees are nonrefundable, unless otherwise expressly stated. The Zoning/Code Enforcement Officer shall have the authority to waive application requirements that are not applicable to a specific project.

##### (5) Application Completeness

(a) An application shall be considered complete if submitted in the required form, includes all mandatory information, including all exhibits and is accompanied by the applicable fee. A determination of application completeness shall be made within five (5) business days by the Zoning/Code Enforcement Officer.

(b) If an application is determined to be incomplete, the Zoning/Code Enforcement Officer shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur and no public hearings shall be scheduled until the deficiencies are corrected.

(c) Upon certification that an application is complete, the Zoning/Code Enforcement Officer shall circulate the application to all relevant departments for their recommendations and, within 15 business days, refer the application to the appropriate authority. An application shall

be considered complete following departmental review and transmittal to the appropriate authority.

B. Referral to Niagara County Planning Department

- (1) Applications subject to General Municipal Law §239 shall be referred to the Niagara County Planning Board in accordance with the provisions of General Municipal Law §239.
- (2) The County Planning Board shall have 30 days upon receipt of an application to approve, disapprove, or approve with modifications of the application.
- (3) If the County approves a referral, then the local board's decision is governed by majority vote.
- (4) If the County disapproves or approves subject to stated conditions or modifications, the local board may override the county's opinion only by a majority plus one (1) vote.
- (5) The local board shall send a copy of its final decision and reasons for such decision on a County referral case to the County Planning Board within seven (7) days after the local decision is reached.

C. Public Hearing Procedure

- (1) Public Hearings shall be required for the following:
  - (a) Zoning Map or Zoning Text Amendments by Town Board;
  - (b) Incentive Developments by the Town Board;
  - (c) Special Permit by the Planning Board;
  - (d) Variances by the Zoning Board of Appeals.

- (2) Setting Hearing

For all matters properly brought before the Town Board, Planning Board or Zoning Board of Appeals for which a public hearing is required by this Law, the body charged with conducting the hearing shall, upon receipt of a completed application, select a reasonable time and place for such hearing, provided, however, that such time shall be not later than 45 days following the receipt of the application, unless the applicant shall agree to some later time.

- (3) Notification

- (a) Mailed Notice
  - (i) The appropriate board secretary shall be required to mail the appropriate notices for public hearings to all property owners within 500 feet measured from property lines of the subject property both within and outside the Town boundaries and all involved agencies and officials.
  - (ii) Notice by mail shall be given at least 15 days in advance of the hearing date by regular United States mail, except that notice to Town agencies or officials may be by interdepartmental memorandum.
  - (iii) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of a state



park or parkway shall be given to the Niagara Frontier State Park Commission at least ten (10) days prior to the date of such public hearing.

- (iv) A written notice of any proposed change or amendment affecting property within 500 feet of the boundaries of any city, village, town or county, shall be given the Clerk of such municipality and to the Clerk of the County Legislature at least ten (10) days prior to the date of such hearing.

(b) Published Notice

A published notice shall be placed in an official newspaper or a newspaper of general circulation in the Town at least once, not less than seven (7) days before the date of the hearing.

(c) Notice Information

The notice of public hearing, both mailed and published shall include:

- (i) The general location of land that is the subject of the application;
- (ii) The legal description or street address;
- (iii) The substance of the application, including the magnitude of proposed development and the current zoning district;
- (iv) The time, date and location of the Public Hearing;
- (v) A phone number to contact the Town; and
- (vi) A statement that interested parties may appear at the Public Hearing.

D. Compliance with New York State Environmental Quality Review Act (SEQRA).

All agencies shall comply with the provisions of SEQRA under Article 8 of the Environmental Conservation Law and its implementing regulations.

E. Engineering and SEQRA Cost Recovery

- (1) Any person who applies to the Town of Porter or its duly constituted Boards may be required to pay an engineering fee deposit.
- (2) No approval, permit, recommendation or review shall be processed until the required deposit is paid to the building department
- (3) The amount of deposit shall be in accordance with the Fee Schedule of the Town of Porter.
- (4) Such deposit shall be in addition to all other fees required by law.
- (5) In addition to the engineering deposit and fee schedule, where the Town incurs additional engineering, administrative and legal costs pursuant to SEQRA, the Town shall recover the actual cost for preparing and reviewing all EIS or DEIS, including costs for scoping, when the Town is the lead agency and requires a DEIS or EIS.
- (6) The fee for residential projects shall not exceed 2% of the total cost, as estimated by the developer and verified by the Town. The total project cost shall be the

cost of the land, plus the cost of all improvements required, not including the cost of buildings and structures.

- (7) The fee for nonresidential construction projects shall not exceed 0.5% of the total project cost. The total project cost shall be the cost of supplying utility service to the project, cost of site preparation, and the cost of labor and materials as determined with reference to a current construction cost data publication in common usage, such as building construction cost data by means. All cost shall include any legal expense, engineering and administrative costs according to contract that are incurred by the Town.
- (8) The fee paid hereunder shall be deposited in a trust account in the name of the Town of Porter.
- (9) Procedure upon Completion
  - (a) Within 120 days of the final action by the Town or board(s) or the issuance of a certificate of occupancy, whichever is later, on an application for the improvement or SEQRA review, the Building Department shall report to the Town Board the actual cost to the Town for engineering.
  - (b) The Town Board shall determine whether the Town costs exceed the total engineering fee charged. If the fee paid by the Town to its consulting engineers exceeds the fee paid by the applicant, the moneys deposited shall become the property of the Town of Porter.
  - (c) In the event that the deposit paid by the developer is more than the actual amount paid by the Town to its consulting engineers or its attorney, then the excess shall be returned with interest, as provided above. SEQRA review fees shall be billed to the applicant and paid prior to approval.
- (10) In no event shall the Town charge against or utilize a fee paid hereunder for deficiencies in Town owned improvements, routine maintenance or matters not directly related to the engineering cost for the specific improvement proposed.

F. Filing of Approvals

The appropriate board secretary shall file all applicable restrictions and other conditions as approved by the Planning Board, Town Board or Zoning Board of Appeals. All covenants, deed restrictions, easements and similar restrictions to be recorded in connection with the approval shall provide that they may not be modified, removed or released without the express consent of the Town Board and shall provide that they may be enforced by the Town of Porter. All filing fees and expenses are the responsibility of the applicant.

## § 101 Building Permits

A. Purpose

The purpose of a building permit is to provide a record that a construction project is in compliance with this chapter, as well as any other applicable laws prior to commencement of the project.

B. Requirement

A building permit is required before the construction, alteration, or restoration of any building or structure may begin.

C. Reviewing Authority

The Zoning/Code Enforcement Officer shall have the authority to issue a Building Permit in accordance with the provisions of this Section.

D. Submission Requirements

- (1) A completed application form.
- (2) Survey Plot Plan/Scaled Drawing
- (3) A survey plot plan, or if a survey plot plan is not available, or at the discretion of the Zoning/Code Enforcement Officer, a scaled drawing shall be submitted in conjunction with the application showing the following:
  - (a) The actual shape, dimensions, radii, angles and area of the lot on which the building or structure is proposed to be erected or if an existing building, of the lot on which it is situated.
  - (b) The location of the lot in relationship to the block on which it is on.
  - (c) The exact size and locations on the lot of the proposed building or buildings or alteration of an existing building and of other existing buildings on the same lot.
  - (d) The dimensions of all yards in relation to the subject building and the distances between such building and any other existing buildings on the same lot.
  - (e) The existing and intended use of all buildings, existing or proposed, the use of land and the number of dwelling units, if any, the building is designed to accommodate.
  - (f) In the case of accessory buildings, the Zoning/Code Enforcement Officer may waive any of the requirements in Subsections D(3)(a) through (e) above as they may deem to be unnecessary:
- (4) Proof of Site Plan approval (if applicable).
- (5) Proof of Special Use Permit approval (if applicable).
- (6) Proof of Variance approval (if applicable).
- (7) Any required application fees in accordance with the fee schedule.

E. Procedure

The Zoning/Code Enforcement Officer shall, within 30 days after the filing of a complete and properly prepared application with all required approvals, including site plan, special permit and/or variances, either issue or deny a Building Permit. If a permit is denied, the Zoning/Code Enforcement Officer shall state, in writing, to the applicant the reasons for such denial.

F. Expiration

- (1) If any construction, alteration, enlargement or other work authorized under a Building Permit is not begun within six (6) months from the date of its issuance, the Building Permit shall expire.
- (2) In the event that work being conducted pursuant to the building permit ceases for a period of six (6) months, the Building Permit shall expire.

- (3) If any construction, alteration, enlargement or other work authorized under a building permit has begun but is not completed within two (2) years from the date of its issuance, such building permit shall expire and no further work shall be undertaken until a new Building Permit has been obtained.
- (4) The Zoning/Code Enforcement Officer may extend the Building Permit for no more than two (2) three-month periods upon a showing of good cause.

## **§ 102 Temporary Use Permit**

### **A. Purpose**

The purpose of a Temporary Use Permit is to provide a record of the temporary use, to ensure that the use is compliant with this chapter, and to determine that the temporary use will not cause an excessive traffic problem or will be detrimental to the neighborhood surrounding the temporary use.

### **B. Requirement**

A Temporary Use Permit is required for any temporary use of a lot or building that would not require a Building Permit.

### **C. Reviewing Authority**

The Zoning/Code Enforcement Officer shall have the authority to issue a Temporary Use Permit in accordance with the provisions of this Section.

### **D. Submission Requirements**

- (1) A completed application form.
- (2) A plot or floor plan drawn to scale showing the manner in which the land or building is proposed to be used.
- (3) A plan describing the estimated traffic generation of the use, available parking, and measures that will be taken to control the traffic and parking. If parking will be provided on other lots, the applicant shall submit a statement of agreement from all property owners who will provide parking for the temporary use.
- (4) Any required application fees in accordance with the fee schedule.

### **E. Procedure**

The Zoning/Code Enforcement Officer shall, within 30 days after the filing of a complete and properly prepared application with all required submissions either issue or deny a Temporary Permit. If the permit is denied, the Zoning/Code Enforcement Officer shall state, in writing, to the applicant the reasons for such denial.

### **F. Expiration**

A temporary Use Permit shall only be valid for the time period specified on the application. The Temporary Use Permit may be revoked at any time if the Zoning/Code Enforcement Officer finds that any of the conditions of the permit have been violated.

## § 103 Certificate of Occupancy

### A. Purpose

The purpose of a Certificate of Occupancy is to ensure that the provisions of this Chapter as well as all other applicable codes have been adhered to following the completion of a construction project or change of use.

### B. Requirement

The occupancy and use of a building erected, reconstructed, restored, altered, or moved or any change in use of an existing building shall be unlawful until a Certificate of Occupancy has been issued.

### C. Reviewing Authority

The Zoning/Code Enforcement Officer shall have the authority to issue a Certificate of Occupancy

### D. Submission Requirements

- (1) A completed application form
- (2) Copies of all plans and permits required for the project
- (3) Notification of Completion

### E. Procedure

- (1) The Applicant shall be responsible for notifying the Zoning/Code Enforcement Officer that the construction on a building or the establishment of a new use has been completed.
- (2) Within ten (10) days upon notification of completion, the Zoning/Code Enforcement Officer shall inspect the site to find that:
  - (a) The work has been carried out in accordance with all approved plans and permits required for such work.
  - (b) The approved water and sewer hookups are functioning properly
  - (c) All Building and Safety Codes have been adhered to.
  - (d) All exposed dirt surfaces have been planted, sodded or seeded
- (3) Following Inspection and within the same ten (10) day period, the Zoning/Code Enforcement Officer shall do one (1) of the following:
  - (a) Issue a Certificate of Occupancy
  - (b) Inform the applicant of the work that needs to be done to achieve compliance.
- (4) A temporary certificate of occupancy for a part of a building may be issued by the Zoning/Code Enforcement Officer for a period of not more than six (6) months, provided that such portion or portions as have been completed may be occupied safely without endangering life or the public welfare.
- (5) A temporary certificate of occupancy may be issued by the Zoning/Code Enforcement Officer for a period of not more than six (6) months upon finding that planting, sodding, or seeding of exposed dirt surfaces was impractical due to seasonal weather conditions.

- (6) The applicant may request that a site be inspected at any time during construction in an attempt to minimize the cost associated with necessary project adjustments.

F. Expiration

A Certificate of Occupancy shall be valid until another Certificate of Occupancy is required for a given building or site.

**§ 104 Certificate of Legal Nonconformity**

A. Purpose

The purpose of a Certificate of Legal Nonconformity is to provide a record of the character and extent of a nonconformity existing as of the effective date of this chapter.

B. Requirement

All nonconforming uses, structures, or lots of record shall obtain a Certificate of Legal Nonconformity before a building permit may be obtained for the subject lot.

C. Reviewing Authority

The Zoning/Code Enforcement Officer shall have the authority to issue a Certificate of Legal Nonconformity.

D. Submission Requirements

- (1) A completed application form

E. Procedure

The Zoning/Code Enforcement Officer shall issue a Certificate of Legal Nonconformity within ten (10) days after receiving a completed and valid application.

F. Expiration

- (1) A Certificate of Legal Nonconformity for a nonconforming use shall be valid until the termination of the use.
- (2) A Certificate of Legal Nonconformity for a nonconforming structure shall be valid until the demolition of the structure.
- (3) A Certificate of Legal Nonconformity for a nonconforming lot of record shall be valid indefinitely or until the lot is merged with another lot for a single development.

**§ 105 Change of Use Permit**

A. Purpose

The purpose of a Change of Use Permit is to provide an easier permitting process for a change of use when no exterior alterations are necessary for such conversion. A change of Use Permit shall only be granted to those uses which are permitted within the given Zoning District.

B. Requirement

A Change of Use Permit is required for any use which is different from the previous use provided that such use:

- (1) Is permitted with site plan review within the given district;
- (2) Will not alter the exterior of the building;

(3) Meets all requirement of this Chapter.

C. Reviewing Authority

The Zoning/Code Enforcement Officer shall have the authority to issue a Change of Use Permit

D. Submission Requirements

(1) A completed application form

E. Procedure

The Zoning/Code Enforcement Officer shall review the application for a Change of Use Permit and determine if such use meets all other requirements of this Chapter.

(1) If such use meets all the requirements of this Chapter, the Zoning/Code Enforcement Officer shall issue a Change of Use Permit within 15 days.

(2) If the Zoning/Code Enforcement Officer finds that such use does not conform to all provisions of this chapter, the Zoning/Code Enforcement Officer shall, within 15 days, deny the applicant a Change of Use Permit. In the event that a Change of Use Permit is denied, the applicant may still submit his/her plan through the Site Plan Review process.

F. Expiration

A Change of Use Permit shall be valid until a Certificate of Occupancy is granted, at which point such a use becomes the existing use.

**§ 106 Site Plan Review**

A. Purpose

The purpose of Site Plan Review is to provide a mechanism for a detailed review of development proposals to ensure that they are consistent with this chapter and the comprehensive plan, will not adversely affect the neighborhood, and promote the safety and general welfare of the community.

B. Requirement

All new developments for a use which are required by this chapter in the district in which it is located to obtain Site Plan Approval or a Special Use Permit shall obtain Site Plan Approval before a Building Permit may be issued.

C. Reviewing Authority

The Planning Board shall be responsible for approving site plans if all specifications contained in this chapter are met. If there are minor variations to any of the specifications, the Planning Board may still approve a site plan.

D. Optional Pre-submission Consultation

The owner or owners of land to be developed in any district may consult with the Planning Board, the Zoning /Code Enforcement Officer, or any other public officials prior to the preparation of the Site Plan. Requirements for Site Plan approval and the relationship of the application to the Comprehensive Plan should be determined in advance of the preparation of the Site Plan.

E. Submission Requirements

- (1) A completed application form.
- (2) A statement indicating the financial capability of the applicant to carry out the proposed development.
- (3) A Completed Environmental Assessment Form (EAF).
- (4) Ten (10) copies of a plat accurately drawn to a scale of not less than 1"=50' certified by a registered / licensed engineer, architect, landscape architect or surveyor as appropriate, as to existing features, design features and boundaries. The plat shall include or be accompanied by the following information:
  - (a) Date of preparation. All revisions shall be noted and dated.
  - (b) A location map showing the location of the tract with reference to the surrounding properties, existing streets and streams within 1,000 feet of the property lines of the proposed development.
  - (c) Name of the development, north arrow, graphic scale, parcel number, the name and address of the record owner, the name and address of the applicant, the name, address, license number, and seal and signature of the person preparing the survey. If the owner of the premises is a corporation, the name and business address of the president and secretary shall be submitted on the application.
  - (d) All distances shall be in feet and one hundredths (0.01) of a foot and all bearings shall be given to the nearest ten (10) seconds.
  - (e) The zoning classification of properties within 200 feet of the boundaries of the property for which the application is made shall be illustrated on a map.
  - (f) A boundary and topographical survey by a surveyor of the total proposed development. If the developer intends to develop a tract of land in phases, the plat shall include the total tract.
  - (g) A copy of any existing or proposed covenants, deed restrictions, which are applicable to the property.
  - (h) The distance, measured along the right-of-way lines of existing streets abutting the property, to the nearest intersections with other public streets within 200 feet of the site boundaries.
  - (i) The location and dimensions of proposed buildings and structures, all accessory structures, signs and fences, if any, including front, side and rear yard setbacks, height of buildings, first floor elevations of all structures and floor plans of buildings.
  - (j) Location of existing buildings and all other structures, including walls, fences, culverts and bridges, with spot elevations of such buildings and structures. Structures to be removed shall be indicated by dashed lines. Structures to remain shall be indicated by solid lines.



- (k) If any proposed construction or development is located within or adjacent to, any identified flood-prone area, the following information shall be submitted:
  - (i) A plan which accurately delineates the area which is subject to flooding, the location of the proposed construction, the location of any other flood-prone development or structures, and the location of any existing or proposed stream improvements or protective works, information concerning the one (1) hundred year flood elevations, descriptions of uplift forces, associated with the one (1) hundred year flood, size of structures, location and elevations of streets, water supply and sanitary sewage facilities, soil types and flood-proofing measures.
  - (ii) A document certified by a registered professional engineer or architect that the proposed construction has been adequately designed against flood. Such statement shall include a description of the type and extent of flood-proofing measures that have been incorporated into the design of the structure.
- (l) Existing and proposed contours, referred to as United States Coast and Geodetic Survey datum, now known as National Vertical Geodetic Datum (NVGD) 1929, with a contour interval of two (2) feet for slopes of less than 20% and an interval of five (5) feet for slopes of twenty 20% or more. Regardless of slope, contours within areas of disturbance shall be plotted at two (2) foot intervals. Dashed lines shall be used to indicate existing contours and solid lines shall be used to indicate proposed contours.
- (m) Location of existing rock outcrops, high points, watercourses, depressions, ponds, marshes, wooded areas and other significant existing features, including previous flood elevations of watercourses, ponds and marsh areas as determined by survey.
- (n) Identification of any wetlands on the site and the regulatory agency approved design techniques proposed to accommodate them.
- (o) Any and all existing streets related to the proposed development; including the names, widths, approximate gradients and sidewalk widths.
- (p) If any new streets are proposed, profiles, indicating grading; cross sections showing the width and design of roadways and sidewalks.
- (q) Acreage, to the nearest hundredth of an acre of the site to be developed for non-residential purposes and/or the area, in square feet, of each lot to be developed for residential purposes.
- (r) Plans of proposed stormwater systems showing feasible connections to existing or any proposed utility systems. Pipe sizes, grades and direction of flow, locations and inlets, manholes or other appurtenances and appropriate invert and other elevations shall be indicated. All stormwater facility plans shall be accompanied by a separate sketch showing all existing drainage within five hundred (500) feet of any boundary, and all areas and any other surface area contributing to the calculations, and showing methods used in the drainage calculations.
- (s) The location and size of all existing and proposed sanitary sewers.

- (t) The location and size of all existing and proposed waterlines, valves and hydrants.
  - (u) The location, width and purpose of all existing and proposed easements and rights-of-way.
  - (v) The location, type and approximate size of existing utilities to serve the development.
  - (w) Tree masses and all individual trees having a caliper of four (4) inches or greater.
  - (x) A soil erosion and sedimentation control plan prepared by a licensed engineer or registered landscape architect.
  - (y) The number and density of dwelling units (if residential).
  - (z) All means of vehicular access for ingress and egress to and from the site onto public streets, showing the size and location of internal streets or driveways and curb cuts including the organization of traffic channels, acceleration and deceleration lanes, additional width and any other improvements on the site or along the site's street frontage necessary to prevent a difficult traffic situation. All pedestrian walkways and provisions for handicapped facilities in compliance with the requirements of the Americans with Disabilities Act (ADA) for an accessible site shall also be shown. In addition, the development plan shall show the existing road system, located outside the development within 200 feet of the development or the next nearest intersection.
  - (aa) Computation of the number of parking spaces to be provided, the location and design of off-street parking areas and loading areas showing size and location of bays, aisles and barriers and the proposed direction of movement.
  - (bb) Proposed screening and landscaping plan prepared by a registered landscape architect
  - (cc) The placement and screening of solid waste disposal and storage facilities.
  - (dd) If applicable, a detailed proposal, including covenants, agreements, or other specific documents showing the ownership and method of assuring perpetual maintenance to be applied to those areas which are to be used for private streets, sewers, recreational or other common purposes.
  - (ee) If the plan is to be completed in phases, the proposed sequence of development with projected time schedule for completion of each of the several phases.
  - (ff) The Zoning/Code Enforcement Officer, in consultation with the Planning Board, may waive any of the above submittal requirements if he/she finds them to be irrelevant to the proposed project.
- (5) Any required application fees in accordance with the fee schedule.

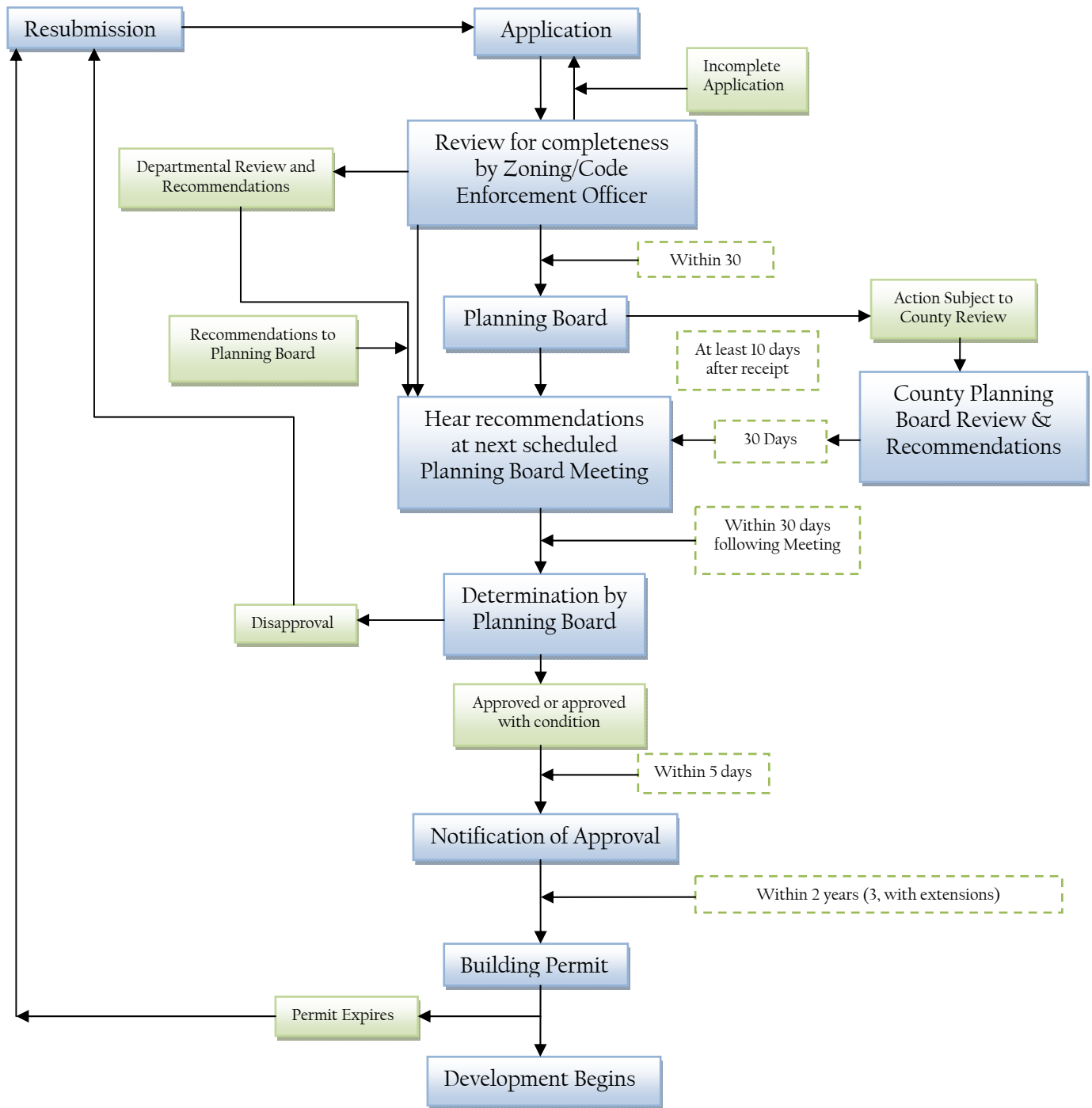
F. Procedure

- (1) Upon certification that the site plan application is complete, the Zoning/Code Enforcement Officer shall circulate the application to all relevant departments for their recommendations and, within 30 business days, refer the site plan to the Planning Board.
- (2) The Planning Board, upon receipt of a site plan from the Zoning/Code Enforcement Officer shall review the application at the next scheduled Planning Board meeting on which the application can be placed on the agenda or in the case of a Special Use at the next available time to schedule a public hearing in accordance with §100 of this Law. The Planning Board shall have at least ten (10) business days before the next scheduled meeting in order to place the application on the agenda for that meeting.
- (3) At the meeting, the Planning Board shall hear the recommendations of the Zoning/Code Enforcement Officer and any other party the Board finds relevant.
- (4) Following the meeting, the Planning Board shall make a determination on the application within 30 days to approve, disapprove, or approve with modification. The time period may be extended by mutual agreement of the Planning Board and the Applicant. If the proposed development is determined to require further environmental review pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR 617, the time period for approval may be extended until such review is completed.
  - (a) If a permit is denied, the Planning Board shall state, in writing, to the applicant the reasons for such denial.
  - (b) If the site plan is approved with modification, such modifications shall be stated in writing and considered as a condition for approval.
- (5) Within five (5) business days following such decision, the Planning Board Secretary shall mail notice of such decision to all persons entitled to such notice and file such decision with the Town Clerk, where it shall be public record.

G. Expiration

The approval of a site plan shall be valid for a period of two (2) years from the date of the approval for purposes of obtaining a building permit. Failure to obtain such a permit within the time period shall cause the approval to become null and void. Upon application, for good cause shown, the Planning Board may extend the validity of the approval two (2) times for a period of six (6) months each time, not to exceed an additional period of one (1) year.

## H. Site Plan Flow Chart



## § 107 Special Use Permit

### A. Purpose

The Town of Porter allows a variety of uses of land, provided that such uses do not adversely affect neighboring properties, the natural environment or the character of the Town and its neighborhoods. Many of the uses listed in this Law 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. 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. Special Use Permits are to be necessary for those uses which, though intended to be allowed when certain criteria are met, are not allowed as a matter of right. It is the intent of this article to determine whether such uses are compatible, desirable and allowable on a case-by-case basis. Special Use Permits are only allowed where the Planning Board makes findings that they meet the criteria of this section. The burden of establishing that the criteria set forth in this article have been met shall in all cases be on the applicant.

### B. Requirement

All new developments for a use or a change of use which are required by this Chapter in the district in which it is located to obtain a Special Use Permit shall obtain a Special Use Permit before a Building Permit.

### C. Reviewing Authority

The Planning Board shall have the authority to issue a Special Use Permit

### D. Submission Requirements

- (1) A completed application form.
- (2) Application for Site Plan Approval including all submission requirements.

### E. Procedure

- (1) The procedure for a Special Use Permit shall be the same as and conducted simultaneous with the Site Plan Review for the proposed development with the exception that a public hearing shall be mandatory in accordance with §100 of this Law. Following the Public Hearing the Planning Board shall make a determination on the application within 60 days to approve, disapprove, or approve with modification. The time period may be extended by mutual agreement of the Planning Board and the Applicant.
- (2) If the proposed development is determined to require further environmental review pursuant to Article 8 of the Environmental Conservation Law and 6 NYCRR 617, the time period for approval may be extended until such review is completed.

F. Findings

- (1) In granting or denying Special Use Permits, the Planning Board shall take into consideration the purposes of this Article, the scale of the proposed project, the possible impact of the proposed project on the nearby properties and neighborhoods, architectural aesthetics of the area and measures that will mitigate potential adverse impacts and preserve or enhance the character of the Town and the welfare it is citizens. The Planning Board shall not grant a Special Use Permit unless and until it shall make the following findings as to whether the proposed special use:
  - (a) Will be in compliance with all provisions and requirements of this and other local laws and regulations and will be in harmony with the purposes of the land use district in which it is located and with the general intent and purposes of this article.
  - (b) Will not be detrimental to adjacent uses.
  - (c) Will not cause undue traffic congestion, unduly impair pedestrian safety or overload existing roads considering their current width, surfacing and condition and will have appropriate parking and be accessible to fire, police and other emergency vehicles.
  - (d) Will not overload any public water, drainage or sewer system or any other municipal facility or degrade any natural resource or ecosystem.
  - (e) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat and hydrology.
  - (f) Will not adversely affect the aesthetics of the premises and adjacent properties and the neighborhoods.
- (2) The Board shall further find whether the adverse impacts of the proposed special use can be mitigated to such an extent that the Special Use Permit should be granted and if so, what conditions need be required to achieve such mitigation.

G. Expiration

- (1) As a condition in granting a Special Use Permit, the planning Board may require that the special Use Permit be renewed at regular intervals. Regular intervals for Special Permit renewal shall not be less than two (2) years.
- (2) The Special Use Permit may be revoked at any time if the Zoning/Code Enforcement Officer finds that any of the conditions of the permit have been violated.

**§ 108 Variance**

**A. Purpose**

The Variance procedure is intended to provide a means by which relief may be granted only when no other applicable remedy, pursuant to other provisions of this Chapter, is available.

**B. Requirement**

A request for Variances may be filed where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the Applicant.

**C. Reviewing Authority**

The Zoning Board of Appeals shall have the authority to grant Use or Area Variances.

**D. Submission Requirements**

**(1) A completed application form.**

The application shall refer to the specified provision of the Local Law involved shall precisely state the following:

**(a)** The interpretation that is claimed.

**(b)** The details of the variance that is being applied for and the grounds on which it is claimed.

**(c)** The use or change in requirement for which the exception is sought.

**(2) Building and Site Plans**

Where applicable, and in all instances where required herein, the application for a variance shall be accompanied by building plans and site plans as pursuant to §106.

**E. Procedure**

**(1)** A public hearing shall be scheduled in accordance with §100 of this Law

**(2)** The parties to the hearing shall be the Town, any person affected by the application who has made timely appearance of record before the board, and any other person including civic or community organizations permitted to appear by the board. The Board shall have power to require that all persons who wish to be considered parties enter appearances in writing on forms provided by the board for that purpose.

**(3)** The chairman or acting chairman of the Board shall have power to administer oaths and issue subpoenas to compel the attendance of witnesses and the production of relevant documents and papers, including witnesses and documents requested by the parties.

**(4)** The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and cross-examine adverse witnesses on all relevant issues.

**(5)** Formal rules of evidence shall not apply, but irrelevant, immaterial, or unduly repetitious evidence may be excluded.

**(6)** The Board shall keep a stenographic record of the proceedings.

- (7) Within 60 days following the close of the public hearing, the Zoning Board of Appeals shall render its decision, approving or disapproving the Variance. Failure to act within 60 days shall be considered a denial of the variance.
- (8) Within five (5) business days following such decision, the Zoning Board Secretary shall mail notice of such decision to all persons entitled to such notice and file such decision with Town Clerk, where it shall be public record.

F. Variance Standards

(1) Use Variance

- (a) No such use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the board of appeals that for each and every permitted use under the zoning regulations for the particular district where the property is located,
  - (i) The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence;
  - (ii) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;
  - (iii) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
  - (iv) That the alleged hardship has not been self-created.
- (b) The board of appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(2) Area Variance

- (a) 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 by such grant. In making such determination the board shall also consider:
  - (i) 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;
  - (ii) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
  - (iii) Whether the requested area variance is substantial;
  - (iv) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and



- (v) Whether the alleged difficulty was self- created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.
- (b) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

(3) Conditions on Variances

The board of appeals shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to, and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

(4) Effect of Variance Approval

The approval of a Variance shall not authorize the establishment or expansion of any use nor the development, construction, reconstruction, alteration or moving of any building or structure. A Variance approval shall merely authorize the preparation, filing, and processing of applications for any permits and approvals which may be required by the codes and ordinances of the Town.

G. Expiration

- (1) A variance shall expire if the applicant fails to obtain a Building Permit or a Use and Occupancy Permit within one (1) year from the date of authorization.
- (2) A use variance shall remain in effect until there is a change of use on the subject property, or the property is transferred to another owner.
- (3) An area variance shall remain in effect until the structure requiring a variance is demolished or altered in such a way to be compliant with this Chapter.

**§ 109 Zoning Text and Map Amendments (Rezoning)**

A. Purpose

The Amendment process herein established is intended to provide a means for making changes in the text of this Law and in the Zoning District Map that have more or less general significance or application. It is not intended to relieve particular hardships nor to confer special privileges or rights but is intended as a tool to adjust the provisions of this Law and the Zoning Map in light of changing, newly discovered or newly important conditions, situations or knowledge.

B. Authority

This Law and the Zoning District Map may be amended from time to time by Law enacted by the Town Board, provided, however, that no such amendment shall be enacted except in accordance with the procedures set out in this Section.

C. Procedure

(1) Proposal by the Town

Amendments may be proposed by either the Supervisor, Town Board, the Planning Board or the Zoning Board of Appeals by transmitting such proposal, together with such supporting materials as may seem appropriate, to the Zoning/Code Enforcement Officer for processing in accordance with the provisions of this Section.

(2) Application by Petition

- (a) When any proposed amendment is initiated by an owner of, or other person having a contractual interest in, real estate to be affected by the proposed amendment, or by the owners of 50% or more of the frontage of real estate to be affected by the proposed amendment, the application for such amendment, addressed to the Town Board, shall be filed with the Zoning/Code Enforcement Officer. The Zoning/Code Enforcement Officer may also request such other and further information and documentation deemed necessary or appropriate to a full and proper consideration and disposition of the particular application.
- (b) When a proposed amendment or change is initiated by petition, the expenses of advertising notice of public Hearing or such proposal shall be paid by the petitioner.

(3) Action by Planning Board

- (a) A proposal for a zoning change or text amendment shall be transmitted to the Planning Board for their recommendation to the Town Board.
- (b) Within 60 days following the receipt of the application, the Planning Board shall transmit their recommendation to the Town Board.
- (c) In making recommendations regarding amendments to the text of the Zoning Law or to the Official Zoning Map, the Planning Board shall consider and make findings on the following matters regarding the proposed amendment:
  - (i) Consistency with the Town's Comprehensive Plan.
  - (ii) Compatibility with the present zoning and conforming uses of nearby property and with the character of the neighborhood.
  - (iii) Suitability of uses proposed by the zoning amendment for the property affected by the amendment.
  - (iv) Availability of public services and infrastructure generally suitable and adequate for uses allowed within the proposed district.

(4) Public Hearing

A public hearing shall be set, advertised and conducted by the Town Board in accordance with §100 of this Law.

(5) Action by Town Board

- (a) Within 60 days following the public hearing, the Town Board shall either refuse the application or adopt the proposed amendment, with or without modifications.
- (b) Within five (5) business days of such action, the Town Clerk shall mail notice of the decision to all entitled parties.

D. Petition of Protest

In case of a protest against such change signed by the owner(s) of twenty percent or more either of the area of land included in such proposed change or of that immediately adjacent extending 100 feet therefrom or that directly opposite thereto extending 100 feet from the street frontage of such opposite land, such amendment shall not become effective except by the favorable vote of at least four (4) Town Board Members.

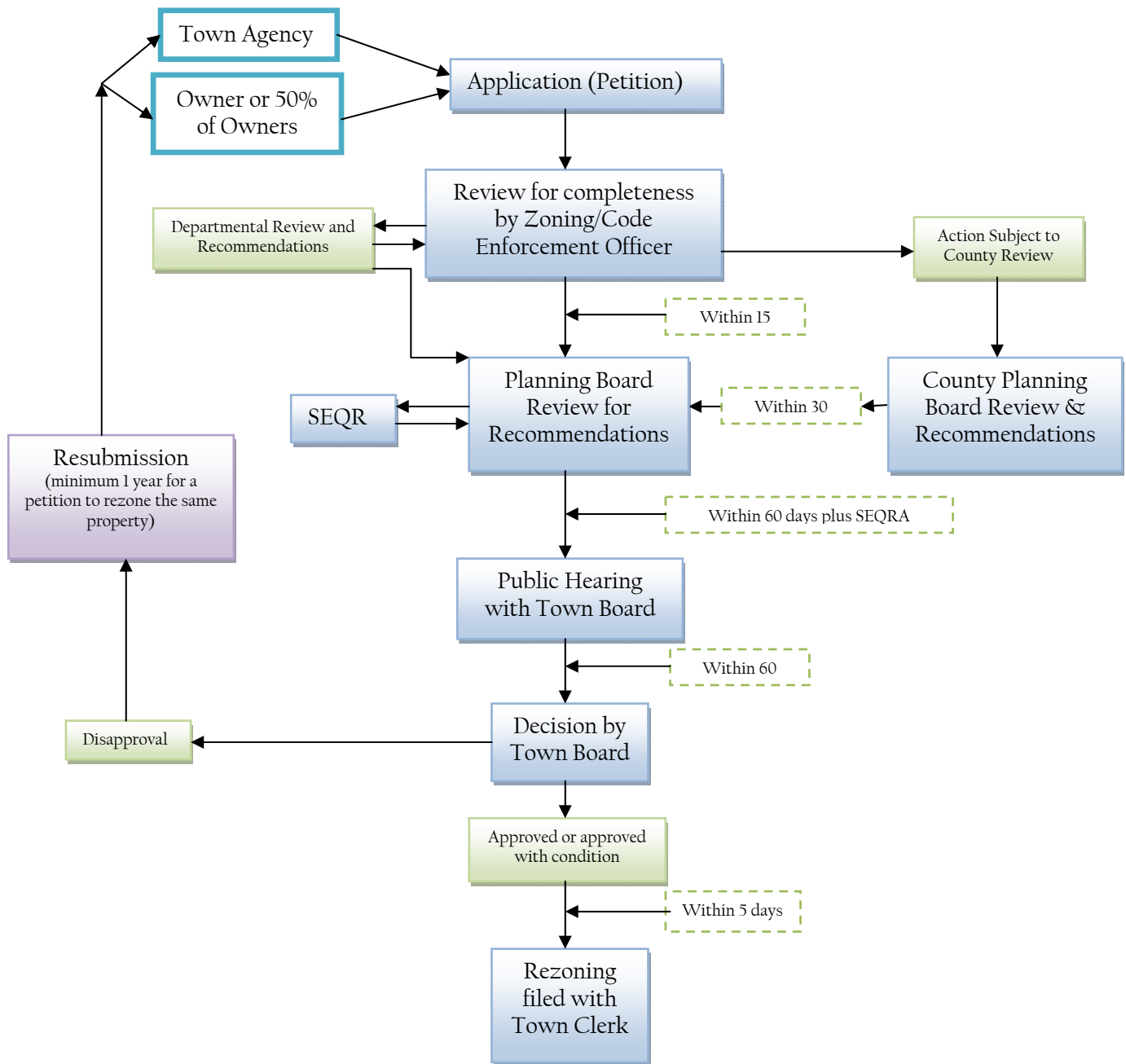
E. Resubmission of Petition

- (1) The Town Board shall not review any applications for the same changes affecting the same property or any portion thereof until the expiration of one (1) year from the date of such previous denial.
- (2) The Town Board may allow resubmission of such petition within said one (1)-year period if it determines that, since the date of action on the prior petition:
  - (a) There has been a significant change in the zoning district classification of an adjacent piece of property;
  - (b) The Town Board has adopted a plan that changes public policy regarding how the property affected by the amendment should be developed;
  - (c) Construction or expansion of a road, waterline, sewer line or other such facilities has occurred to serve the property and can comfortably accommodate the intensity of development allowed under the proposed classification; or
  - (d) There has been some other extraordinary change in conditions or circumstances, outside the control of the petitioner, which justifies waiver of the one (1)-year restriction on a new petition; this, however, shall not include a change in the ownership of the subject property.
  - (e) It has been determined by the Town Board that the petitioner has satisfactorily complied with all suggestions by the Town Board regarding the prior submission.

F. Expiration

Once a text amendment or zoning map change is adopted, only another resolution by the Town Board can reverse or alter the amendment.

G. Zoning Change Flow Chart



## § 110 Incentive Developments

### A. Purpose

To provide a mechanism for developers who offer concessions which accomplish goals of the Comprehensive Plan in exchange for an increase in density or permitted use. Since a development receiving an incentive may have negative impacts on transportation systems and other Town services, the review process needs to examine the benefits against the impacts in a public forum.

### B. Requirement

Any development proposing to receive an incentive in exchange for an amenity must first be granted approval before undergoing site plan review or any other permitting process.

### C. Reviewing Authority

The Town Board shall be responsible for approving incentives.

### D. Submission Requirements

An application for incentives shall include the following:

- (1) A description of the proposed amenities.
- (2) The cash value of the proposed amenities.
- (3) A narrative which describes:
  - (a) The benefits to the community and how the amenity furthers the goals of the Town and the Comprehensive Plan.
  - (b) Preliminary indication that there are adequate sewer, water, transportation, waste disposal, and fire protection facilities to handle the proposed incentive or how such facilities will be provided.
- (4) The requested incentive.
- (5) A sketch plan of the proposed development.

### E. Procedure

- (1) The Town Board shall refer the application to the Planning Board for its review and comment within 30 days.
- (2) The Planning Board may review the proposal for up to 60 days and may forward the proposal to any Agency it deems appropriate for their comments.
- (3) After receiving comments from the Planning Board, the Town Board shall schedule and hold a public hearing in accordance with §100 of this Law.
- (4) All applicable requirements of SEQR shall be complied with as part of the review and hearing process.
- (5) Following review and public hearing, the Town Board shall, within 30 days, do one (1) of the following.
  - (a) Deny the application for incentive on the grounds that the public benefit does not exceed the expected impacts of the proposal or that there are insufficient facilities to handle the increased density.

- (b) Approve the application for incentive in exchange for the proposed amenity.
- (c) Approve the application for incentive with modifications which may either decrease the amount of incentive or request a greater amenity. Such an approval shall be agreed upon by the applicant.

F. Expiration

An approval of an incentive development shall be binding provided that the applicant obtains all required permits, including site plan review, within one (1) year following such approval.

## Article IX. Nonconformities

### § 111 Purpose

The purpose of this Section is to regulate nonconforming uses, nonconforming buildings and structures, and nonconforming lots of record. The zoning districts established by this Chapter are designed to guide the future use of the Town's land by encouraging the development of desirable residential, commercial and other uses with appropriate groupings of compatible and related uses to promote and protect the public health, safety and general welfare. The regulations of this Section are intended to restrict further investments that would make nonconformities more permanent in their location in inappropriate districts as well as to afford opportunities for creative use and reuse of those other nonconformities that contribute to a neighborhood and are consistent with the goals of the Comprehensive Plan. At the same time, vested rights and the right for owners to develop on substandard lots shall be protected.

### § 112 Nonconforming Use

#### A. Continuation of Nonconforming Use

Any lawfully existing nonconforming use may be continued so long as it remains otherwise lawful, subject to the regulations contained in this Section. Ordinary repair and maintenance or replacement, and installation or relocation of non-bearing walls, non-bearing partitions, fixtures, wiring or plumbing, may be performed.

#### B. Structural Alteration or Enlargement of Nonconforming Use

No structure containing a nonconforming use shall be structurally altered or enlarged unless such use shall thereafter conform to the regulations of the zoning district in which it is located. No parking, yard, space or dimensional nonconformity may be created or increased.

#### C. Change of Nonconforming Use to Conforming

- (1) Whenever any nonconforming use shall have been changed or altered so as to conform to the provisions of this Chapter or its amendments, then such nonconforming use shall no longer be nonconforming to the extent to which it then conforms to this Chapter or its amendments.
- (2) The prior nonconforming use shall not be resumed, provided, however, that if a later amendment to this Chapter should make the use as so changed or altered nonconforming with its provisions then such use as changed or altered shall become a new nonconforming use to the extent of such nonconformance or noncompliance.

#### D. Expansion or Extension of Nonconforming Use

No nonconforming use may be extended or expanded in any building or structure, or in or on the lot on which it is located, nor may any nonconforming use be moved to a different position upon the lot on which it is located, so as to alter the use or its location which existed at the time that the use became nonconforming.

E. Abandonment or Discontinuance of Nonconforming Uses

- (1) In the event that any nonconforming use or a building or structure containing a nonconforming use, in or on the land, or within a building or structure or portion thereof, is abandoned or ceases, such nonconforming use shall not be resumed. A nonconforming use shall be presumed abandoned when one (1) of the following conditions exists:
  - (a) When the characteristic equipment and furnishings of the nonconforming use have been removed from the premises and have not been replaced by similar equipment within one (1) year unless other facts show intention to resume the nonconforming use.
  - (b) When a nonconforming use has been discontinued for a period of one (1) year.
  - (c) When a nonconforming use has been replaced by a conforming use.
  - (d) When a nonconforming use has been changed in accordance with this part.
- (2) Any subsequent use thereof shall conform to the applicable provisions of this Chapter or its amendments and the prior nonconforming use shall not be resumed, unless in accordance with the applicable provisions of this Chapter or its amendments.
- (3) Nothing in this part shall prevent the strengthening or restoring to a safe condition of any portion of a building that is declared unsafe by a proper authority.
- (4) Nothing in this part shall be interpreted as authorization for the continuation of the illegal use of a structure or premises or construction of a structure or building in violation of zoning regulations in existence at the time of enactment of this part.

F. Nonconforming Accessory Uses and Structures

No use, structure or sign that is accessory to a principal nonconforming use shall continue after such principal use or structure has been abandoned or removed, unless it shall thereafter conform to all the regulations of the zoning district in which it is located.

**§ 113 Nonconforming Structures**

A. Continuance

Any nonconforming structure which is devoted to a use which is permitted in the zoning district in which it is located may be continued so long as it remains otherwise lawful, subject to the restrictions in this Section.

B. Enlargement, Repair or Alterations

Any nonconforming structure may be enlarged, maintained, repaired or altered provided no additional nonconformity is created or the degree of the existing nonconformity is not increased.



C. Damage or Destruction

- (1) In the event that any part of a nonconforming structure which contributed to its nonconformity is damaged or destroyed, by any means, to the extent of more than 50% of the fair market value of the structure before being damaged, such part shall not be restored unless it shall thereafter conform to the regulations of the zoning district in which it is located.
- (2) When such a part of a nonconforming structure is damaged or destroyed, by any means, to the extent of 50% or less of the fair market value of the structure before being damaged, no repairs or restoration except in conformity with the applicable zoning district regulations shall be made unless a building permit is obtained and restoration is actually begun within six (6) months after the date of such partial destruction and completed within one (1) year.

D. Moving

No nonconforming structure shall be moved in whole or in part, for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.

**§ 114 Non Conforming Lot of Record**

- A. Any lot that existed before adoption of this chapter, but does not meet the lot area or lot width requirements of this Chapter, may still be developed by any use which is permitted within the District.
- B. If necessary, setback requirements may be reduced proportionally to the amount of nonconformance.

**§ 115 Nonconforming Signs**

A. Continuance

Subject to the limitations and termination provisions hereinafter set forth, any lawfully existing nonconforming sign may be continued so long as it otherwise remains lawful after the effective date of this Law.

B. Alteration, Expansion, Moving

No nonconforming sign shall be:

- (1) Changed or altered in any manner which would increase the degree of its nonconformity;
- (2) Expanded;
- (3) Changed or altered to prolong its useful life; or
- (4) Moved in whole or in part to any other location where it would remain nonconforming.

C. Termination of Nonconforming Signs

(1) Termination by Abandonment

Any nonconforming sign, the use of which is discontinued for a period of 90 days, regardless of any intent to resume or not to abandon such use, shall be deemed to be abandoned and shall not thereafter be re-established. Any period of such discontinuance caused by government actions, strikes, material shortages or forces of nature, and without any contributing fault by the nonconforming user, shall not be considered in calculating the length of discontinuance for purposes of this Subsection.

(2) Termination by Change of Business

Any nonconforming sign advertising or relating to a business on the premises on which it is located shall be terminated upon any change in the ownership or control of such business.

(3) Termination by Damage or Destruction

Any nonconforming sign damaged or destroyed, by any means, to the extent of 35% of its replacement cost new shall not be restored but shall be terminated.

## Article X. Enforcement

### § 116 Code Compliance Required

The commencement or continuation of any activity regulated by this Code that is not in compliance with the express provisions of this Code, or that is not in compliance with the express provisions of any permit or approval, including any attached findings or conditions, shall be a violation of this Code, and subject to enforcement under the terms of this Article and New York Law.

### § 117 Enforcement Responsibility

The responsibility for the enforcement of this Code is delegated to the Zoning/Code Enforcement Officer.

Whenever a violation of this local law occurs, any person may file a complaint. All such complaints must be filed with the Zoning/Code Enforcement Officer who shall properly record such complaint, immediately investigate to determine the validity of the charge, and take whatever action is necessary to assure compliance with this Zoning Law.

### § 118 Penalties

A. A violation of this Law is hereby declared to be an offense punishable by:

- (1) A fine not to exceed \$350 or imprisonment for a period not to exceed six (6) months, or both, for a conviction of a first offense
- (2) For a conviction of a second offense, both of which were committed within a period of five (5) years, punishable by a fine of not less than \$350 nor more than \$700 or imprisonment for a period not to exceed six (6) months, or both
- (3) Upon conviction of a third or subsequent offense, all of which were committed within a period of five (5) years, punishable by a fine of not less than \$700 not more than \$1,000 or imprisonment for a period not to exceed six (6) months, or both

B. Each week's continued violation shall constitute a separate additional violation.

### § 119 Accumulated Fines

Accumulated fines or penalties shall not continue to accrue if one (1) of the following occurs:

- A. The violation is actively being cured pursuant to a plan, including a clear time frame and deadline, accepted by the Zoning/Code Enforcement Officer. Failure to actively cure the violation shall reactivate the enforcement process.
- B. Request by the offender for a hearing.
- C. Complete application to the applicable board to bring the violation into conformance.

**§ 120 Remedies and Enforcement Powers**

On behalf of the Town, the Zoning/Code Enforcement Officer may take any one or more of the following actions as a remedy for any violation of this Zoning Law:

- A. Issuing and serving on the violator a notice of violation and order to remedy;
- B. Withholding any approvals or permits required by this Law or order other officials to withhold such approval or permits;
- C. Bringing an action for injunction or mandamus to abate a violation;
- D. Bringing an action for an injunction (or, in appropriate cases, for mandamus) to prevent the violation and/or to prevent the occupancy or use of any site or structure involved in the violation;
- E. Pursuing prosecution of the violation.

## Article XI. Definitions

### § 121 Word Usage and Interpretation

In the interpretation of this Law, the provisions and rules of this Law shall be observed and applied, except when the context clearly requires otherwise.

- A. Words in the present tense include the future;
- B. Words in the singular include the plural and the plural the singular;
- C. The word "shall" is intended to be mandatory;
- D. The word "lot" shall include the word "plot" or "parcel";
- E. The word "person" shall include an individual, firm or corporation;
- F. A building or structure includes any part thereof;
- G. The word "and" indicates that all connected items, conditions, provisions or events shall apply;
- H. The word "or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination;
- I. The words "either...or" indicates that the connected items, conditions, provisions or events may apply singly but not in any combination.
- J. The word "Town" means the Town of Porter, New York.
- K. The word "County" means the County of Niagara, New York.

In case of any difference of meaning or implication between the text of this Law and any caption, illustration or table, the text shall control.

### § 122 Definitions

**ACCESSORY APARTMENT** – A separate living unit created within a single-family home and occupied by a family member.

**ACCESSORY STRUCTURE**– A structure, the use of which is customarily, and specifically, incidental to that of the principal building or use that is located on the same lot with the principal building. A deck or similar structure or a garage attached to a principal structure by a roof or a common wall shall be considered part of the principal structure.

**ACCESSORY USE** – A use which is customarily and specifically incidental to that of the primary use of a lot. Uses listed in the primary use chart of this chapter shall not be considered an accessory use.

**ADULT ORIENTED ESTABLISHMENT** – Any business involved in the dissemination of material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or anatomical activities, including but not limited to adult arcades, adult bookstores or video stores, adult cabarets, adult live entertainment, adult motels, adult motion picture theaters, adult novelty stores and massage establishments.

**ADULT ARCADE** – An establishment where, for any form of consideration, one (1) or more still or motion-picture projectors, slide projectors or similar machines, or other image-producing machines, for viewing for five (5) or fewer persons each, are regularly used to show films, motion pictures, videocassettes/DVD's, slides or other photographic reproductions which are characterized by the depiction or description of specified sexual anatomical activities.

**ADULT BOOKSTORE OR VIDEO STORE** – A business which derives 25% or more of its gross income from the sale or rental of, or utilizes 25% or more of its retail selling area for, any one (1) of the following: books, magazines, periodicals, films, motion pictures, videos, slides, compact discs and/or computer-generated or other visual representations which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

**ADULT CABARET** – A nightclub, bar, restaurant, bottle club, juice bar, club or similar commercial establishment, whether or not alcoholic beverages are served, which regularly features:

- Persons who appear nude or in a state of nudity or semi-nudity; or
- Live performances which are characterized by the exposure of specified anatomical activities or by specified sexual activities; or
- Films, motion pictures, videocassettes/DVD's, slides or other photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical activities.

**ADULT LIVE ENTERTAINMENT** – A business where an adult male or female exposes parts of his or her body identified in the definition of "specified anatomical activities."

**ADULT MOTEL** – A hotel, motel or similar business which:

- Offers public accommodations, for any form of consideration, which provide patrons with closed-circuit television transmissions, films, motion pictures, videocassettes/DVD's, slides or other photographic reproductions characterized by the depiction or description of specified sexual activities or specified anatomical activities AND which advertises the availability of this sexually oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising, including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio or television; or
- Offers a sleeping room for rent for a period of time less than ten (10) hours; or
- Allows a tenant or occupant to subrent the sleeping room for a period of time less than ten (10) hours.

**ADULT MOTION-PICTURE THEATER** – An enclosed or unenclosed building or structure or portion of a building or structure or drive-in theater used for presenting materials having, as a dominant theme, material distinguished or characterized by an emphasis on matter depicting, describing or relating to specified sexual activities or specified anatomical activities for observations by patrons therein.

**ADULT NOVELTY STORE** – A business which for any form of consideration, derives 25% or more of its gross income from the sale or rental of, or utilizes 25% or more of its retail selling area, for instruments, devices or paraphernalia which are designed for use or marketed primarily for stimulation of human genital organs or for sadomasochistic use or abuse of themselves or others.

**AGRICULTURAL ENTERPRISE** – A retail or wholesale enterprise providing services or products principally utilized in agricultural production, including structures, agricultural equipment and agricultural equipment parts, batteries and tires, livestock, feed, seed, fertilizer and equipment repairs, or providing for wholesale or retail sale of grain, fruit, produce, trees, shrubs, flowers or other products of agricultural operations, or for the retail sale of processed or unprocessed foods such as milk and milk products, baked goods, meats, canned or bottled goods produced as part of an ongoing agricultural operation.

**AIRPORT / LANDING FIELD** – Any landing area, runway or other facility, designed, used, or intended to be used either publicly or privately by any person or persons for landing and taking off of winged aircraft, including all necessary taxiways, aircraft storage, tiedown areas, hangers and other necessary and customary accessory buildings and open space.

**ALTERATIONS** – As applied to a building or structure, the change or rearrangement in the supporting members of a building or structure, such as bearing walls, columns, beams or girders; an enlargement of a building or structure, whether by extending on a side or by increasing in height; the moving from one (1) location or position to another; any alteration whereby a structure is adapted to another or different use.

**ANIMAL DAY CARE, KENNEL OR SHELTER** – Any building or lot where four (4) or more dogs are raised and/or boarded for the purpose of sale, breeding, training or exhibition, or are boarded for a fee or are sheltered for humanitarian reasons.

**ANIMAL HOSPITAL** – A facility where animals are given medical or surgical treatment for compensation, and boarding of animals is incidental to such treatment.

**ANIMAL RACETRACK** – A facility designed for the legal racing of animals, including facilities for spectators and concession stands.

**APARTMENT** – An independent, self-contained dwelling unit with its own sleeping, sanitary and cooking facilities in a building containing two (2) or more such dwelling units or more than one (1) use.

**APARTMENT BUILDING** – A building, which contains three (3) or more apartments or two (2) apartments in the same building with another principal use, and may include common areas for amenities exclusively used by the residents of the building.

**APARTMENT COMPLEX** – A development with three (3) or more apartment buildings.

**APPLICANT** – A property owner or agent of a property owner who has filed an application for a land development activity.

**ART STUDIO** – An establishment where art is taught, studied, or practiced. The arts may include but are not limited to music, dance, painting, sculpture, photography, and modeling, but shall not include any art associated with an adult use.

**ASSISTED LIVING FACILITY** – A facility providing living arrangements combining housing with personal services and healthcare assistance. Assisted Living Facilities promote independence while providing care and support on a 24-hour basis. Assisted Living Facilities are for people needing assistance with activities of daily living, but wishing to live as independently as possible for as long as possible. Assisted living exists to bridge the gap between independent living and nursing homes.

**BANK/FINANCIAL INSTITUTION** – A business establishment authorized to perform financial transactions such as receiving and lending money.

**BANQUET FACILITY** – A facility designed and operated to serve food and beverages to large crowds for celebrations, ceremonies, or charitable gatherings. Food may either be prepared on site or catered in.

**BAR, COCKTAIL LOUNGE, TAVERN** – An establishment used primarily for the dispensing, or sale of alcoholic beverages by the drink for on-site consumption.

**BED AND BREAKFAST ESTABLISHMENT** – A proprietor-occupied and operated dwelling originally designed as a residential structure where overnight lodging and a breakfast are provided for compensation to tourist or recreational guests.

**BOARDING/ROOMING HOUSE** – Any building other than a hotel, motel, or bed and breakfast, supervised or not, which provides living and sleeping arrangements for four (4) or more roomers, with or without meals being provided, for a period of ten (10) days or longer, and who have agreed to pay a specific rent for a room.

**BUFFER** – A strip of land which is planted and maintained in shrubs, bushes, trees, grass or other ground cover material and within which no building or structure shall be authorized except a wall or fence.

**BUILDING** – An immobile structure enclosed within exterior walls or firewalls, built, erected and framed of component structural parts and designed for the housing, shelter, enclosure, or support of individuals, animals or property of any kind.

**BUILDING SUPPLY STORE** – Primarily indoor retail establishments selling lumber and other large building materials, and also including paint, wallpaper, glass, fixtures, nursery stock, lawn and garden supplies.

**BUILDING, PRINCIPAL** – A building in which is conducted the main or principal use of the lot on which said building is situated.

**CAMPING GROUND** – A parcel of land used or intended to be used, let or rented for transient, vacation and recreational occupancy by travel trailers, campers, tents, recreational vehicles, motor homes and the motor vehicles propelling or carrying the same, but excluding manufactured homes designed for year-round occupancy or as a place of residence.

**CAR WASH** – Any building or premises, or portion thereof, the use of which is devoted to the business of washing automobiles for a fee, whether by automated cleaning devices or otherwise.

**CARRIAGE HOME** – A single family dwelling, which includes a master bedroom suite on the first (ground) floor, along with the cooking, eating and main living areas. Carriage homes may be grouped together and consist of two (2) to four (4) individual living units, each with its own entrance, attached by at least one (1) common wall. Each individual unit shall have an attached garage of sufficient size for two (2) vehicles.

**CEMETERY** – Land used or intended to be used for the burial of the dead and may include columbariums, crematoriums, mausoleums, and mortuaries when operated in conjunction with and within the boundaries of such cemetery.



**CERTIFICATE OF OCCUPANCY** – A certificate issued by the Code Enforcement Officer upon completion of construction, alteration or change in occupancy or use of a building. Said certificate shall acknowledge compliance with all the requirements of the New York State Uniform Fire Prevention and Building Code.

**CHANGE OF USE** – A transition to a use that is different, in terms of specific use type, than the use it replaces. Not included are changes in occupancy involving the same specific use where there is not increase in floor area, extension of use or addition.

**CHANNEL** – A natural or artificial watercourse with a definite bed and banks that conducts continuously or periodically flowing water.

**CLEARING** – Any activity that removes the vegetative surface cover.

**CLUBS or ORGANIZATIONS** – A nonprofit association of persons who are bona fide members paying annual dues and which owns, hires or leases a building, or portion thereof, the use of such building being restricted to members.

**COLLEGE** – An institution of higher learning including all associated facilities which may include dormitories, testing facilities, athletic fields, and administration buildings. All buildings associated with a college may not necessarily be located on the same site.

**COMMERCIAL RECREATION FACILITY** – Any commercial activity conducted for gain which is generally related to the entertainment field, including but not limited to bowling alleys, roller-skating rinks, miniature golf, golf driving ranges, billiard halls, and commercial swimming pools, but not including indoor theaters, massage parlors, model studios or places in which pornographic materials are displayed, sold or distributed or in which lewd or obscene activity is conducted.

**COMMERCIAL STABLE** – A facility where one (1) or more horses are kept for riding, driving, training, breeding, sale, or are boarded for a fee, including indoor and outdoor riding arenas and paddocks, and where more than 50% of feed, bedding and other supplies are produced at off-premises locations, and manure and other wastes are disposed of off-premises.

**COMMUNICATION ANTENNA** – An apparatus designed for the purpose of emitting radio frequency ("RF") radiation, to be operated or operating from a fixed location pursuant to FCC authorization, for the transmission of writing, signs, signals, data, images, pictures, and sounds of all kinds, including the transmitting device and any on-site equipment, switches, wiring, cabling, power sources, shelters or cabinets associated with that antenna and added to a Tower, structure, or building as part of the original installation of the antenna. For most services, an Antenna will be mounted on or in, and is distinct from, a supporting structure such as a Tower, structure or building. However, in the case of AM broadcast stations, the entire Tower or group of Towers constitutes the Antenna for that station. For purposes of the Nationwide Agreement, the term Antenna does not include unintentional radiators, mobile stations, or devices authorized under Part 15 of the FCC rules. Ham radios and other privately operated radio devices shall not be considered a communication antenna.

**COMMUNICATION ANTENNA (EXISTING BUILDING)** – A communication antenna that is installed on an existing building.

**COMMUNICATION ANTENNA (EXISTING TOWER)** – A communication antenna that is installed on an existing tower.

**COMMUNICATION TOWER** – Any structure built for the sole or primary purpose of supporting FCC licensed or authorized Antennas, including the on-site fencing, equipment, switches, wiring, cabling, power sources, shelters, or cabinets associated with that Tower but not installed as part of an Antenna as defined herein.

**COMMUNITY OPEN SPACE** – An area of land or an area of water, or a combination of land and water, within a development site designed and intended for the use and enjoyment of the residents of the development, not including streets, off-street parking and areas set aside for public facilities. "Community open space" shall be substantially free of structures but may contain such improvements in the development plan as finally approved and as are appropriate for the recreation of the residents. "Community open space" may be publicly dedicated or may be owned by a homeowners' association consisting of the landowners within a development or may be owned by a single landowner; provided, however, that in the event of ownership by a single landowner or homeowners' association, such parcel or parcels shall be subject to restrictive covenants acceptable to the Town and sufficient to satisfy its preservation against further development and to preserve its character.

**CONDOMINIUM** – Any land, including the buildings and other improvements thereon, with respect to which a declaration has been recorded in accordance with Article 9-B of the New York Real Property Law.

**CONVENIENCE STORE** – A retail use having a gross floor area of no more than 2,500 square feet and whose primary offering is sale of prepackaged food products, produce, with sale of ancillary items, such as household items, flowers, and other goods commonly associated with the same and intended to meet the needs of the immediate neighborhood in which it is located.

**COVERAGE, BUILDING** – The percentage of a lot area occupied by the ground area of principal and accessory buildings on such lot, excluding the area occupied by a solar energy system.

**COVERAGE, LOT** – The percentage of a lot area occupied by the ground area of all principal and accessory buildings, driveways, swimming pools, decks and other impermeable materials on such lot.

**DAY CARE** – Daytime care or instruction of three (3) or more persons away from their own homes for more than three (3) but less than 24 hours per day, by an individual, association, corporation, institution or agency, whether or not for compensation or reward.

**DAY CARE CENTER** – Any establishment caring for children or adults that are not considered Family Day Care Homes, Group Family Day Care Homes or Family Adult Day Care Homes. No day care center shall be established without prior licensing, and every permit for a day care center shall be conditioned upon the licensing, certification or other approval of every public agency charged with the regulation or supervision of any facet of the activity of the proposed center.

## DAY CARE HOME

**DAY CARE HOME, FAMILY** – A program, licensed pursuant to NYS Social Service Law §390, caring for children for more than three (3) hours per day per child in which child day care is provided in a family home for three (3) to six (6) children. A family day care provider may, however, care for seven (7) or eight (8) children at any one (1) time if no more than six (6) of the children are less than school age and the school-aged children receive care primarily before or after the period such children are ordinarily in school, during school lunch periods, on school holidays, or during those periods of the year in which school is not in session in accordance with the regulations of the department and the department inspects such home to determine whether the provider can care adequately for seven (7) or eight (8) children.

**DAY CARE HOME, FAMILY ADULT** – A program caring for adults for more than three (3) hours per day per person in which day care is provided in a family home for three (3) to six (6) adults.

**DAY CARE HOME, GROUP FAMILY** – A program, licensed pursuant to NYS Social Service Law §390, caring for children for more than three (3) hours per day per child in which child day care is provided in a family home for seven (7) to ten (10) children of all ages, or up to twelve children where all of such children are over two (2) years of age, except for those programs operating as a family day care home which care for seven (7) or eight (8) children. A group family day care provider may provide child day care services to two (2) additional children if such additional children are of school age and such children receive services only before or after the period such children are ordinarily in school or during school lunch periods, or school holidays, or during those periods of the year in which school is not in session.

**DEC** – New York State Department of Environmental Conservation.

**DEDICATION** – The deliberate appropriation of property by its owner for general public use.

**DESIGN MANUAL** – The *New York State Stormwater Management Design Manual* (New York State Department of Environmental Conservation), most recent version, including applicable updates, that serves as the official guide for stormwater management principles, methods and practices.

**DESIGN STANDARDS** – As used in this Law, a series of specific building and site development requirements established for the purpose of providing standards for property owners, architects, and contractors to aid in the preparation of appropriate plans and to enhance and protect quality development.

**DETERIORATION** – The condition or appearance of a building or structure characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or other evidence of physical decay or neglect, excessive use or lack of maintenance.

**DEVELOPER** – A person who undertakes land development activities.

**DORMITORY**– Any structure, other than a sorority or fraternity house, owned or controlled by an educational institution and occupied primarily as a place of temporary residence for persons whose permanent residence is elsewhere and who are employed or enrolled at the educational institution.

**DRIVE-THRU FACILITY** – A portion of a structure otherwise permitted by this Chapter that by physical design and location encourages or permits customers to receive a service or obtain a product while remaining in a motor vehicle.

**DRUGSTORE / PHARMACY** – An establishment which sells prescription and nonprescription drugs as well as other common household items.

**DWELLING** – A building or portion thereof designed or used exclusively for residential occupancy, including one-family dwellings, two-family dwellings, and multifamily dwellings. A “boarding” or “rooming house”, “nursing home”, “dormitory”, “hotel” or other similar structure shall not be deemed a dwelling.

**DWELLING, MULTIFAMILY** – A dwelling on a single lot with three (3) or more dwelling units. See also Apartment Building

**DWELLING, SINGLE-FAMILY ATTACHED** – A row of two (2) or more adjoining dwelling units each on their own lot, each of which is separated from the others by one (1) or more party walls. See also Townhouse.

**DWELLING, SINGLE-FAMILY DETACHED** – A dwelling designed for and occupied by not more than one (1) family and surrounded by open space or yards and having no roof, wall or floor in common with any other dwelling unit.

**DWELLING, TWO-FAMILY** – A dwelling designed for and occupied by not more than two (2) families in separate dwelling units.

**DWELLING UNIT** – One (1) or more living or sleeping rooms with cooking and sanitary facilities for one (1) person or one (1) family.

**EDUCATIONAL INSTITUTION** – A college or university giving general academic instruction. Included within this term are areas or structures for administration, housing of students, dining halls, and social or athletic activities when located on part of the institutions land that is not detached from that portion of the campus where classroom facilities are maintained, by more than a street and/or other property owned by the institution.

**EROSION CONTROL MANUAL** – The most recent version of the *New York Standards and Specifications for Erosion and Sediment Control manual* (Empire State Chapter of the Soil and Water Conservation Society), commonly known as the “Blue Book.”

**EXCAVATION, SITE GRADING OR FILLING** – The disturbance of the soil on a lot or lots that will affect the lesser of one quarter (1/4) acre, one (1) foot change in grade, or will alter drainage patterns off-site.

**EXPOSED TO PUBLIC VIEW** – Any premises or open space or any part thereof or any building or structure that may be lawfully viewed by any member of the public from a sidewalk, street, alleyway or from any other adjoining or neighboring premises.

**EXTERIOR OF PREMISES** – Open space on the premises outside of any building located thereon.

**EXTERMINATION** – The control and elimination of insects, rodents and vermin.

**FAMILY** – Persons occupying a dwelling unit and living together as a family unit. It shall be presumptive evidence that more than four (4) persons living in a single dwelling unit who are not related by blood, marriage, domestic partnership or legal adoption do not constitute the family unit. In determining whether individuals are living together as a family unit, the following criteria must be present:

- The occupants must share the entire dwelling unit and live and cook together as a single housekeeping unit. A unit in which the various occupants act as separate roomers may not be deemed to be occupied by the functional equivalent of a traditional family;
- The group shares expenses for food, rent or ownership costs, utilities and other household expenses;
- The group is permanent and stable. Evidence of such permanency and stability may include:
  - The presence of minor dependent children regularly residing in the household who are enrolled in a local school;
  - Members of the household having the same address for the purposes of voter registration, driver's license, motor vehicle registration and filing of taxes;
  - Members of the household are employed in the area;
  - The household has been living together as a unit for one (1) year or more whether in the current dwelling unit or other dwelling units;
  - Common ownership of the furniture and appliances among the members of the household; and
  - The group is not transient or temporary in nature;
- Any other factor reasonably related to whether or not the group is the functional equivalent of a family;
- A fraternity or sorority will not be considered the functional equivalent of a family.

**FARM** – The land and buildings, equipment, manure processing and handling facilities, and practices which contribute to the production, preparation and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation as defined in the Agriculture and Markets Law Article 25-AA, § 301.

**FARM MARKET** – A permanent building devoted to the sale of agricultural products and at least 50% of the products are grown or produced on one (1) or more farms in the surrounding area, which shall include the Town of Porter and neighboring Towns.

**FARM OPERATIONS / AGRICULTURAL ACTIVITY** – the use of land and on-farm buildings and all activities and practices which are inherent and necessary to the operation of a farm and which contribute to the production, preparation, and marketing of crops, livestock and livestock products as a commercial enterprise, including a commercial horse boarding operation, as defined and governed in the Agriculture and Markets Law Article 25-AA, § 301.

**FARM POND** – An impoundment of water on a farm property used for a legitimate farming operation.

**FARM WORKER RESIDENCE** – A temporary or permanent structure that is clearly accessory to an agricultural operation and occupied by farm workers employed on the premises and their families.

**FLOOR AREA** – The floor area of a building, but excluding stairwells and elevator shafts at each floor; floors or parts of floors devoted exclusively to vehicular parking or loading; and all floors below the first or ground floor except when used for or intended to be used for service to the public as customers, patrons, clients, patients or tenants.

**FOOD PROCESSING PLANT** – A large facility engaged in the transformation of raw ingredients into food that is suited for consumption. Some techniques include peeling and husking, pasteurization, slicing, mincing, liquefaction, cooking, mixing, seasoning, butchering, pickling, fermentation, culture, carbonation, condensation, and extraction.

**FUNERAL HOME** – A building used for the preparation of deceased human beings for burial or interment and for the display of the deceased and ceremonies connected therewith before burial or cremation.

**GARAGE** – A building or part of a building used for the parking of one (1) or more operative motor vehicles.

**GARBAGE** – Putrescible animal and vegetable waste resulting from the handling, preparation, cooking and/or consumption of food.

**GARDEN CENTER** – A retail establishment providing plants, trees, flowers and other landscaping and gardening materials primarily to the public, including plant nurseries and greenhouses.

**GENERAL RETAIL** – A small variety establishment selling primarily to local patrons.

**GOLF COURSE** – A tract of land laid out for at least three (3) holes for playing the game of golf and improved with tees, greens, fairways, and hazards and that may include ancillary uses such as a clubhouse, restaurant, tennis courts, swimming pool, parking lot, driving range, and maintenance buildings, any of which may be rented out for events.

**GRADING** – Excavation or fill of material, including the resulting conditions thereof.

**GREENWAY** – an undeveloped corridor of land which is planted with trees and other vegetation.

**GROCERY STORE** – A grocery store is a store, with a floor area greater than 2,500 square feet but not exceeding 40,000 square feet, established primarily for the retailing of food.

**HARBORAGE** – Any condition, man-made or natural, which affords a breeding place or hiding place for rodents, insects, or other pests.

**HAZARDOUS WASTE** – Waste which because of its quantity, concentration, or physical, chemical, or infectious characteristics may pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, or disposed of, or otherwise managed.

**HEIGHT of BUILDING** – The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat roofs, to the deck line for mansard roofs and to the mean height between eaves and ridge for gable, hip and gambrel roofs. Height does not include chimneys, cooling towers, elevator bulkheads, ornamental cupolas, domes or spires, and/or parapet walls that do not exceed ten (10) feet in height.

**HEIGHT of STRUCTURE** – The vertical distance measured from the average elevation of the base to the highest fixed point of the structure

**HELIPORT** – Any area of land, water or structure which is used or intended to be used for the landing and takeoff of helicopters and any appurtenant areas which are used for heliport buildings or helicopter facilities or rights-of-way, together with all heliport buildings and facilities thereon.

**HOME OCCUPATION** – An occupation, profession, activity, or use conducted by the residents of the property that is clearly a customary, incidental, and secondary use of a residential dwelling unit and which does not alter the exterior of the property or affect the residential character of the neighborhood

**HOMEOWNER'S ASSOCIATION** – An association of homeowners and lot owners having responsibilities for the management and upkeep of common property and improvements.

**HOSPITAL** – A duly licensed institution providing medical or surgical care and treatment for the sick and injured.

**HOTEL** – A facility offering transient lodging accommodations on a daily rate to the general public and providing additional services, such as restaurants, meeting rooms, and recreational facilities.

**HUNTING CLUB** – A building, facility or organization catering exclusively to members and their guests, including facilities for trap shooting, target shooting, and archery, for both practice and competition, and other outdoor recreational pursuits by members and their guests, except motorized racing, provided, however, that there are not conducted any vending stands, merchandising or other commercial activities except as may be incidental to the operation and maintenance of the facility, and generally for the benefit of members and to further the purposes of the club.

**IMPERVIOUS COVER** – Those surfaces, improvements and structures that cannot effectively infiltrate rainfall, snowmelt and water (e.g., building rooftops, pavement, sidewalks, driveways, etc.).

**INDUSTRIAL STORMWATER PERMIT** – A State Pollutant Discharge Elimination System (SPDES) permit issued to a commercial industry or group of industries which regulates the pollutant levels associated with industrial stormwater discharges or specifies on-site pollution control strategies.

**INDUSTRIAL USES** – Any activity conducted in connection with the manufacture, assembly, disassembly, fabrication, resource recovery, storage or processing of materials or products, all or any part of which is marketed off the premises or marketed to other than the ultimate consumer.

**INCENTIVE** – The allowance of a given variation of the zoning regulation in exchange for a community benefit pursuant to Town Law 261-b.

**INFESTATION** – The presence of insects, rodents, vermin or other pests on the premises which constitute a health hazard, either to the occupants of the premises and/or to surrounding properties and/or residents.

**INFILTRATION** – The process of percolating stormwater into the subsoil.

**JUNK (INOPERABLE) VEHICLE** – any motor vehicle which satisfies one (1) or more of the following criteria:

- That is partially dismantled or wrecked;
- That is not operable;
- That is unlicensed;
- That could not be safely or legally operated on a highway;
- That in any other way constitutes a threat to public health, safety and welfare or;
- That has not been moved for a continuous period of more than 45 days.

**JUNK YARD** – An open area used for the storage or accumulation of wastes, used and secondhand materials including but not limited to building materials, scrap metal, plastic, paper, rags, glass, broken appliances and electronic equipment, rubber tires, bottles, refuse, inoperative vehicles and other machinery, and other debris that is not generated by or used in any ongoing agricultural operations on the premises. For the purpose of this Zoning Law an automobile wrecking yard is also considered a junkyard.

**JURISDICTIONAL WETLAND** – An area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as "hydrophytic vegetation."

**LAND DEVELOPMENT ACTIVITY** – Construction activity including clearing, grading, excavating, soil disturbance or placement of fill that results in land disturbance of equal to or greater than one (1) acre, or activities disturbing less than one (1) acre of total land area that is part of a larger common plan of development or sale, even though multiple separate and distinct land development activities may take place at different times on different schedules.

**LANDOWNER** – The legal or beneficial owner of land, including those holding the right to purchase or lease the land, or any other person holding proprietary rights in the land.



**LICENCED PROFESSIONAL** – A landscape architect or professional engineer licensed to practice his or her profession in New York State.

**LOADING SPACE** – An unobstructed, hard-surfaced area, no part of which is located in any street or public right-of-way and the principal use of which is for the standing, loading or unloading of trucks and trailers.

**LOT** – An area of land not divided by streets, having frontage on a street, consisting of a single parcel occupied or to be occupied by a building or buildings together with any required open spaces, or devoted or to be devoted to a particular use or combination of uses permitted under this zoning chapter.

**LOT, AREA** – The total horizontal area included within the lot lines. For purposes of these regulations, the area below the high water line shall not be included in the calculation of the lot area.

**LOT, CORNER** – A lot at the junction of and abutting on two (2) or more intersecting streets. Any yard fronting on a street shall be deemed front yards.

**LOT, DEPTH** – The horizontal distance between the midpoints of the front and rear lot lines measured in the general direction of the side lot lines.

**LOT, FLAG** – a parcel of land that is accessible only by a very long narrow strip leading from a main road. Flag lots are not permitted. Flag shape lots may be permitted provided the minimum road frontage is satisfied.

**LOT, INTERIOR** – A lot other than a corner lot.

**LOT LINE (OR PROPERTY LINE)** – A boundary of a lot.

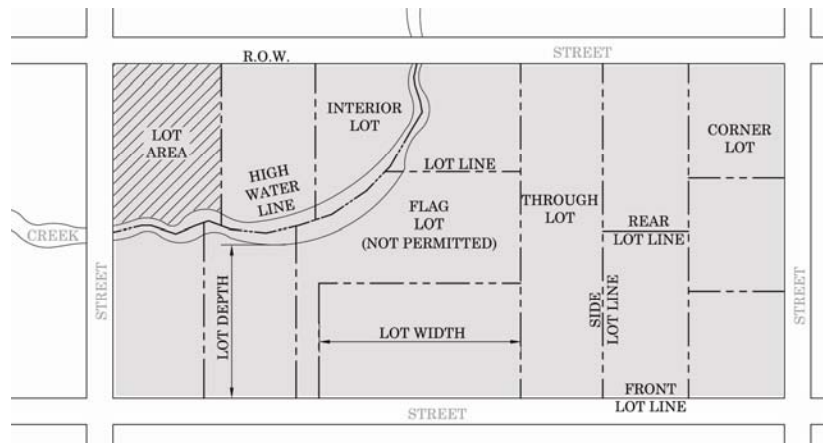
**LOT LINE, FRONT** – The street line along the principal street on which the lot abuts.

**LOT LINE, SIDE** – The lines separating the lot from the immediately adjacent lot.

**LOT LINE, REAR** – The boundary of a lot, which is most distant from, and is or is most nearly parallel to, the front lot line.

**LOT, THROUGH** – A lot, which is not a corner lot, and which has two (2) street lines.

**LOT, WIDTH** – The distance between the side lot lines measured across the required front yard minimum setback line.



**LOT OF RECORD** – A lot which is part of a subdivision recorded in the office of the County Clerk or a lot or parcel described by metes and bounds which has been so recorded prior

to the effective date of this zoning law or any amendment thereof that would affect such lot.

**MACHINE SHOP** – A workshop where power-driven tools are used for making, finishing, or repairing machines or machine parts.

**MAINTENANCE AGREEMENT** – A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of stormwater management practices.

**MANUFACTURED HOME** – A dwelling unit, built to HUD standards, which incorporates structures or components designed for residential occupancy, constructed by a method or system of construction whereby the structure or component is wholly or in substantial part manufactured in a manufacturing facility and is intended for permanent installation on a building site. For the purposes of this Zoning Law a manufactured home shall be treated the same as a dwelling unit constructed on-site as long as it has at least 1,000 square feet of floor area and meets the requirements of the district.

**MANURE LAGOON** – A facility designed to collect and anaerobically digest animal waste into fertilizer.

**MARINA** – A facility for storing, servicing, fueling, berthing, and securing and launching of private pleasure craft that may include the sale of fuel and incidental supplies for the boat owners, crews and guests.

**MEDICAL CLINIC** – A structure or portion of a structure used by physicians, surgeons, dentist, chiropractor, optometrist, psychologist, psychiatrist, or other health related professional.

**MINI-STORAGE FACILITY** – An enclosed area or structure used for the storage of items not belonging to the owner of the land on which such enclosed area or structure is located, in exchange for rent paid for the use of said enclosed area or structure. A mini-storage facility may also include an area for outdoor storage of recreational vehicles.

**MIXED-USE** – A structure or structures containing a mix commercial and residential uses.

**MOBILE HOME** – A structure, whether occupied or not, transportable in one (1) or more sections, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, and includes plumbing, heating, and air conditioning and electrical systems contained therein. For the purposes of this Zoning Law a mobile home may be used as a dwelling for a migrant worker on a farm lot or in a mobile home park.

**MOBILE HOME PARK** – A parcel that has been improved for the rental or lease of two (2) or more lots and the provision of services for mobile homes for non-transient residential use.

**MOTEL** – A building or groups of buildings designed or used primarily for providing sleeping accommodations for automobile travelers and having parking spaces adjacent to the sleeping rooms.

**MOTER VEHICLE RACETRACK** – A facility designed for racing all types of motor vehicles including facilities for spectators and concession stands.

**NONCONFORMING LOT OF RECORD** – A lot of record which does not comply with the lot requirements for any permitted use in the district in which it is located.

**NONCONFORMING SIGN** – Any sign lawfully existing prior to the date of enactment of any provision of this Chapter or any amendment thereto to which it does not conform.

**NONCONFORMING STRUCTURE** – Any structure or part of a structure legally existing at the time of the enactment of this Chapter or any of its amendments which does not conform to the provisions of this Chapter.

**NONCONFORMING USE** – Any use lawfully being made of any land, building or structure, including an accessory use on the effective date of this Chapter, or any amendment to it rendering such use nonconforming, which does not comply with all of the regulations of this Chapter, or any amendment hereto, governing use for the zoning district in which such land, building or structure is located.

**NONPOINT SOURCE POLLUTION** – Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include but not be limited to pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

**NUISANCE** – Any one (1) of the following shall be considered a nuisance:

- Any public or private condition so defined by common law, or that would constitute a nuisance according to the statutes, laws, and regulation of the State of New York, its governmental agencies or the code or ordinances of the Town of Porter;
- Any physical condition existing in or on the exterior of any premises which is potentially dangerous, detrimental, or hazardous to the life, health or safety of the persons on, near or passing with the proximity of the premises where such conditions exist;
- Any physical condition, use or occupancy of any premises or its appurtenances considered an attractive nuisance to children, including but not limited to abandoned wells, shafts, basements, swimming pools, abandoned appliances, motor vehicles, excavations and unsafe fences or structures; or detrimental to the health or safety of children, whether in a building on the premises or a building or upon an unoccupied lot;
- Any premises which are manifestly capable of being a fire hazard or are manifestly unsafe or unsecured as to endanger life, limb or property;
- Any premises which are unsanitary, or which are littered with rubbish or garbage, or which have an uncontrolled growth of weeds; or conditions which render air, food, or drink unwholesome or detrimental to the health of human beings; or
- Any structure or building that is in a state of dilapidation, deterioration or decay; faulty construction; overcrowded; open, vacant or abandoned; damaged by fire to an extent as not to provide shelter; in danger of collapse or failure; and is dangerous to anyone on or near the premises.

**NURSERY SCHOOL** – A place providing or designed to provide daytime care or instruction for three (3) or more children from two (2) to five (5) years of age away from their home for up to three (3) hours per day, whether or not for compensation or reward.

**NURSING OR CONVALESCENT HOME** – A structure designed or used for residential occupancy and providing limited medical or nursing care on the premises for occupants, but not including a hospital.

**OFFICE** – A use that is devoted exclusively to business, non-profit or professional services.

**OFFICE PARK** – A group of two (2) or more principal buildings and their accessory buildings or uses, together with any open spaces as are remaining, located on one (1) lot, which buildings shall have a unified site plan and shall be designed to function as one (1) project. The buildings in an "office park" shall be occupied or used principally for business or professional offices.

**OPERATOR** – Any person, persons, or entity not the owner who has charge, care or control of a building or part thereof, with or without the knowledge, consent or authority of the owner.

**OUTDOOR FURNACE** – A self-contained unit designed to provide heating to a building or structure, which unit is located outside of that building or structure.

**OUTDOOR DISPLAY** – the small, temporary outdoor display of merchandise which is to be sold at the establishment on a seasonal basis. (for example windshield washer fluid or lawn furniture)

**OUTDOOR MATERIAL STORAGE** – The large scale commercial storage of any materials, merchandise, stock, supplies, machines and the like that are not kept in a structure having at least four (4) walls and a roof, regardless of how long such materials are kept on the premises. Outdoor storage shall not include materials associated with a farming operation including the sale of firewood or the storage of materials associated with an active construction site.

**OWNER** – Any person having individual or joint title to real property in any form defined by the laws as an estate or interest therein, whether legal or equitable, and however acquired.

**PADDOCK** – A fenced area, usually near a stable, used chiefly for grazing horses.

**PARKING SPACE** – A space for the temporary parking of a motor-driven vehicle within a public or private parking lot that meets the regulations outlined in §78 of this Law.

**PATIO HOME** – A single-family dwelling, one or two stories, which includes a master bedroom suite on the ground floor, along with the cooking, eating, and living areas. Units are often attached to other units and common areas are maintained by a homeowners association.

**PERSONAL SERVICE ESTABLISHMENT** – A store or shop providing personal, technical, or repair services, assistance, or advice to individual consumers, including, but not limited to:

- Art Studio
- Appliance repair and rental
- Bank, financial institution
- Barbershop, beauty shop
- Copy services
- Dressmaker, tailor
- Dry-cleaning, laundry pick up stations
- Furniture upholstery
- Laundromat
- Locksmith
- Optical center
- Professional photography studio
- Repair shops: bicycle, computer, musical instrument, shoe, watch

Personal service establishments do not include the sale, rental, storage, service or repair of any motor vehicles, including automobiles, trucks, buses, trailers, recreational vehicles, and motorcycles, or any use listed separately as allowed in a district.

**PET STORE** – A retail establishment engaged in the sale of animals for use as pets and which is licensed by New York State to do so.

**PHASING** – Clearing a parcel of land in distinct pieces or parts, with the stabilization of each piece completed before the clearing of the next.

**PLACES OF WORSHIP** – A building used for regular organized religious assembly with related facilities such as the following in any combination: rectory, parsonage, parish houses, religious schools including child day care, meeting rooms and recreational facilities customarily related thereto. For purposes of these regulations, a parish house, rectory or similar domicile located on an individual lot shall comply with the requirements for a single-family dwelling.

**POLLUTANT OF CONCERN** – Sediment or a water quality measurement that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the land development activity.

**PORTABLE ON DEMAND STORAGE (PODS)** – Any container, storage unit, 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.

**PREMISES** – A building, dwelling, lot, plot or parcel of land.

**PROJECT** – Land development activity.

**PROPERTY** – Land and whatever is erected on, growing on, placed on or affixed to.

**PUBLIC AND SEMI-PUBLIC USES** – Uses operated by the public body such as schools, public libraries, public safety buildings, museums, public meeting halls and community centers. This definition shall not include hospitals.

**PUBLIC UTILITIES** – Any person, firm, corporation, municipality or municipal board duly authorized under State or municipal regulations, to furnish to the public electricity, gas, steam, communications, water, drainage, flood control, irrigation, garbage or trash disposal, or sewage disposal.

**RECHARGE** – The replenishment of underground water reserves.

**RECREATIONAL POND** – Excavated lands for the purpose of constructing an impoundment of water not larger than one (1) acre or more than 15 feet deep measured from high water surface.

**RECREATIONAL VEHICLE/UTILITY TRAILOR** – Vehicles or trailers for recreational or utilitarian uses that can be driven, towed, or hauled. This includes, but is not limited to, those vehicles commonly referred to as RVs, such as motor homes and travel trailers, as well as any snowmobile, pull camper, all terrain vehicle (ATV), tent trailer, special purpose trailer, utility trailer used for hauling, or other similar vehicle. A recreational vehicle(s) such as an ATV on a trailer shall constitute one (1) recreational vehicle. Trailers associated with agricultural uses shall not be considered a recreational vehicle/utility trailer.

**REFUSE OR RUBBISH** – All discarded, useless, unusable or worthless solid waste matter or materials, combustible or noncombustible, including but not limited to garbage; trash; ashes; paper; paper goods and products; wrappings, cans; bottles; containers; yard clippings; garden waste; debris; pet excrement; junk; glass; boxes; crockery; wood; mineral matter; plastic; rubber; leather; furniture; household goods; appliances; bedding; scrap metal; construction material; dead or rotting vegetation; tires; abandoned, inoperative or unusable automobiles, farm implements and/or other vehicles; and solid commercial or industrial waste.

**RESEARCH LABORATORY** – A building or group of buildings in which are located facilities for scientific research, investigation, testing, or experimentation, but not facilities for the manufacture or sale of products, except as incidental to the main purpose of the laboratory.

**RESTAURANT** – A building or portion thereof where food and beverages are sold to the public for consumption. The sale of alcohol may be permitted, but only when secondary to the primary purpose of the sale of food.

**ROAD FRONTAGE** – The width of a parcel measured along a road right-of-way line.

**ROADSIDE FARM STAND** – A temporary structure or vehicle located on a seasonal basis for the purpose of displaying and selling of farm products produced on the premises or from a nearby farm.

**SCREEN or SCREENING** – Hidden by a solid fence of sufficient height to block the view, but not to exceed maximum fence height of the district.

**SEDIMENT CONTROL** – Measures that prevent eroded sediment from leaving the site.

**SENIOR HOUSING** – Independent living and assisted living facilities located in detached single-family dwelling units, townhouse-style dwelling units or multi-family dwelling unit buildings restricted to individuals or families in which all residents are aged 55 or older, with the exception of spouses or caregivers.

**SENSITIVE AREAS** – Cold water fisheries, shellfish beds, swimming beaches, groundwater recharge areas, water supply reservoirs, and habitats for threatened, endangered or special concern species.

**SEASONAL** – A condition of being utilized or occupied for less than nine (9) months out of a calendar year

**SIGN** – A "sign" is a name, identification, description, display or illustration which is affixed to, or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business. "Sign" does not include merchandise, pictures or models of products or services incorporated in a window display, works of art which in no way identify a product, graffiti, or scoreboards located on athletic fields.

**ADDRESS SIGN** – A sign displaying the number or other designation assigned to a housing unit, business establishment, or other structure for purposes of mail delivery, emergency services, and so forth.

**ADVERTISING SIGN** – A sign which directs attention to a business, commodity, service or entertainment conducted, sold or offered at a location other than the premises on which the sign is located.

**ATTACHED SIGN** – Any sign attached to a building.

**BANNER SIGN** – Any sign possessing characters, letters, illustrations or ornamentations or designed to attract attention by scenic effect, with or without characters; "banner" shall include streamers, wind-driven whirligigs, or other devices applied to cloth, paper, fabric or similar material, with or without frame and not of permanent construction.

**DETACHED SIGN** – Any sign not attached to a building.

**POLITICAL SIGN** – A sign expressing support for a candidate for public office, or expressing any other position regarding a public figure or a public issue but bearing no commercial message whatsoever.

**PORTABLE SIGN** – Any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs made as A-frames or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for commercial messages; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.

**SIGN BOARD** – The portion of building originally designed for the placement of a sign and may include only a portion of the building over the door or may extend the length of the building.

**SIGN FACE** – The area of the sign where the name, identification, description, display or illustration is located not including the structural support for the sign.

**TOURIST DIRECTIONAL SIGN** – Any sign, not exceeding six (6) square feet in area, posted by a business at a location along a public road or highway not on the same premises as the business, for the purpose of guiding tourists and other prospective customers to their location.

**TEMPORARY SIGN** – Any sign that is used only for a short, specifically limited time and that is not permanently mounted.

**WINDOW SIGN** – Any sign that is placed inside a window or upon the windowpanes or glass and is visible from the exterior of the window.

**SOLAR ENERGY SYSTEM** – An arrangement or combination of components and structures designed to provide heating, cooling, hot water, or electricity through the process of collecting, converting, storing, protecting against unnecessary dissipation, and distributing solar energy.

**SPECIALTY RETAIL** – A retail establishment that sells to a narrowed or niche audience, either by region, demography, or product mix.

**SPECIFIED ANATOMICAL ACTIVITIES** – The display of less than completely and opaquely covered human genitals, pubic region, pubic hair or buttocks or female breast or breasts below a point immediately above the top of the areola. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

**SPECIFIED SEXUAL ACTIVITIES** – Include the presence of any of the following conditions: human genitals in a state of sexual stimulation or arousal; acts of actual or simulated human masturbation, sexual intercourse, oral copulation or sodomy; fondling or other intentional erotic touching of human genitals, pubic region, buttocks, anus or female breasts; excretory functions as part of or in connection with any of the activities set forth in this definition.

**SPDES GENERAL PERMIT FOR CONSTRUCTION ACTIVITIES GP-02-01** – A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to developers of construction activities to regulate disturbance of one (1) or more acres of land.

**SPDES GENERAL PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL SEPARATE STORMWATER SEWER SYSTEMS GP-02-02** – A permit under the New York State Pollutant Discharge Elimination System (SPDES) issued to municipalities to regulate discharges from municipal separate storm sewers for compliance with EPA established water quality standards and/or to specify stormwater control standards.

**STABILIZATION** – The use of practices that prevent exposed soil from eroding.

**STOP-WORK ORDER** – An order issued which requires that all construction activity on a site be stopped.

**STORMWATER** – Rainwater, surface runoff, snowmelt and drainage.

**STORMWATER HOTSPOT** – A land use or activity that generates higher concentrations of hydrocarbons, trace metals or toxicants than are found in typical stormwater runoff, based on monitoring studies.

**STORMWATER MANAGEMENT** – The use of structural or nonstructural practices that are designed to reduce stormwater runoff and mitigate its adverse impacts on property, natural resources and the environment.

**STORMWATER MANAGEMENT FACILITY** – One (1) or a series of stormwater management practices installed, stabilized and operating for the purpose of controlling stormwater runoff.



**STORMWATER MANAGEMENT OFFICER (SMO)** – An officer or employee designated by the Town Board to accept and review Stormwater Pollution Prevention Plans (SWPPPs), forward the plans to such employee, officer, or board of the Town of Porter which may be reviewing an application for a construction activity requiring submission of a SWPPP, and inspect stormwater management practices.

**STORMWATER MANAGEMENT PRACTICES (SMPS)** – Measures, either structural or nonstructural, that are determined to be the most effective, practical means of preventing flood damage and preventing or reducing point source or nonpoint source pollution inputs to stormwater runoff and water bodies.

**STORMWATER POLLUTION PREVENTION PLAN (SWPPP)** – A plan for controlling stormwater runoff and pollutants from a site during and after construction activities.

**STORMWATER RUNOFF** – Flow on the surface of the ground resulting from precipitation.

**STREET LINE** – The right-of-way line of the street.

**STRUCTURE** – Anything constructed or erected at a fixed location on the ground or attached to something having a fixed location on the ground.

**SURFACE WATERS OF THE STATE OF NEW YORK** – Lakes, bays, sounds, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial seas of the State of New York and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the State or within its jurisdiction.

Storm sewers and waste treatment systems, including treatment ponds or lagoons which also meet the criteria of this definition, are not waters of the state. This exclusion applies only to man-made bodies of water which neither were originally created in waters of the state (such as a disposal area in wetlands) nor resulted from impoundment of waters of the State.

**SWIMMING POOL** – Any structure intended for swimming, recreational bathing or wading which has a design water depth of 24 inches or more. This includes in-ground, above ground, hot tubs, spas, inflatable, and fixed in-place wading pools.

**TAXI/LIMOUSINE SERVICE** – A lot or garage on which taxicabs and/or limousines are stored or from where they are dispatched.

**THEATER** – An enclosed building or movie house where motion pictures or live performances are shown to the public, but which is not a sexually oriented business.

**TOWN BOARD** – The Town Board of the Town of Porter.

**TOWNHOUSE** – A dwelling unit, generally having two (2) or more floors, attached to two (2) or more similar units, and separated by a party wall.

**TOWNHOUSE DEVELOPMENT** – A cluster of three (3) or more townhouse groups in a single unified development.

**USABLE OPEN SPACE** – An area of land reserved for the enjoyment of the residents in a multi-family development. Usable open space may be available to all residents within the development or designated for use by individual residents.

**USE** – The specific purpose for which any land or structure is designed, arranged or occupied.

**VEHICLE RENTAL/ DEALERSHIP** – A business that is principally engaged in selling, leasing, or renting of motor vehicles or trailers.

**VEHICLE REPAIR SHOP/BODY SHOP** – Engine repair, body work, frame straightening, painting, upholstering, electrical work, tune-ups and all other passenger vehicle repair activities not specifically listed in the definition of "vehicle service station".

**VEHICLE SERVICE (FUELING) STATION** – Any building, land area or other premises, or portion thereof, used or intended to be used for any one (1) or a combination of the following activities:

- Retail dispensing or sales of automobile fuels.
- Retail dispensing or sales of automobile lubricants, including oil changing and chassis lubrication where substantial disassembly is not required.
- Retail dispensing or sales of automobile coolants.
- Incidental repair or replacement of parts, such as windshield wiper blades, lights bulbs, air filters, oil filters, batteries, belts, tires, fuses and the like.

**VEHICLE STORAGE YARD**– Any outdoor area used for the storage of motor vehicles not including vehicle dealerships, vehicle rental, or vehicle repair shops.

**WAREHOUSE / DISTRIBUTION CENTER** – A structure used for the acceptance of bulk deliveries, storage of the delivered items, and/or re-distribution of delivered items.

**WATERCOURSE** – A permanent or intermittent stream or other body of water, either natural or man-made, which gathers or carries surface water.

**WATERWAY** – A channel that directs surface runoff to a watercourse or to the public storm drain.

**WIND-ENERGY CONVERSION SYSTEMS** – One (1) or more mechanical devices, such as wind chargers, windmills or wind turbines, which are designed and used to convert wind energy into a form of useful energy.

**WIND ENERGY CONVERSION SYSTEM (COMMERCIAL)** – A wind-energy conversion system consisting of one (1) wind turbine, one (1) tower, and associated control or conversion electronics with a rated capacity greater than 250 kilowatts, a total height of more than 150 feet, not to exceed 450 feet, and is intended solely to supply electrical power into a power grid for sale.

**WIND ENERGY CONVERSION SYSTEM (NON-COMMERCIAL)** – A wind-energy conversion system consisting of one (1) wind turbine, one (1) tower, and associated control or conversion electronics which has a rated capacity of not more than 250 kilowatts and a maximum total height of 150 feet.

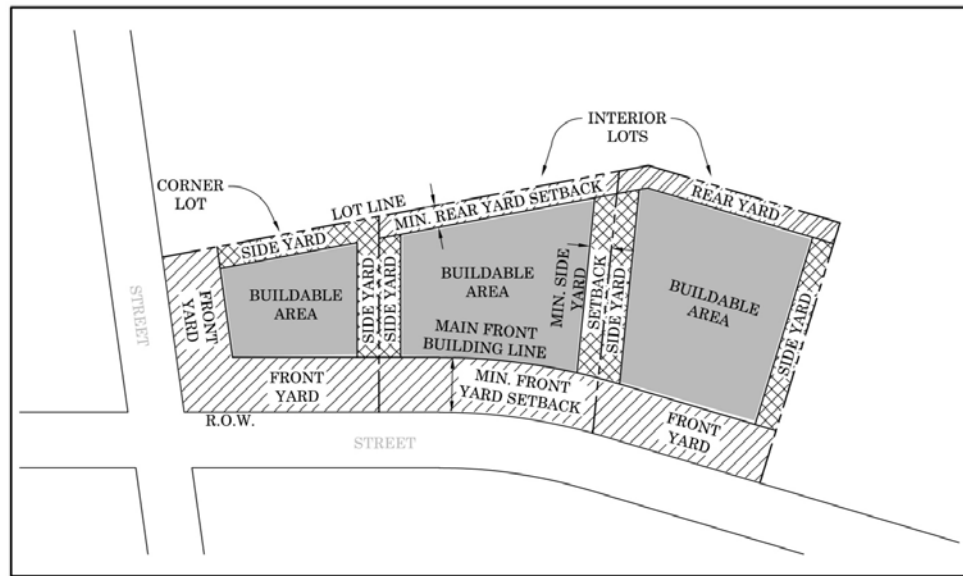
**WINERY** – A manufacturing facility or establishment engaged in the processing of grapes to produce wine or wine-like beverages and which may include an area for wine tasting and for the sale of wine and wine related items.

**YARD** – An open space on the same lot with a building or structure.

**YARD, FRONT** – An open space extending the full width of the lot between the front building line and the front lot line, unoccupied and unobstructed by buildings or structures from the ground upward, the depth of which shall be the least distance between the front lot line and the front of any building line. On corner lots, the front yard shall be both yards that front on the streets.

**YARD, REAR** – An open space extending the full width of the lot between the rearmost building and the rear lot line, unoccupied and unobstructed by buildings or structures from the ground upward, except as before specified, the depth of which shall be the least distance between the rear lot line and the rear of any building.

**YARD, SIDE** – An open space extending from the front yard to the rear yard between any building and the side lot line, unoccupied and unobstructed by buildings or structures from the ground upward. The required width of a side yard shall be measured horizontally from the nearest part of any building. An interior side yard is any side yard not on the street side of a corner lot.





## APPENDIX 1

### Sample Stormwater Control Facility Maintenance Agreement

*Whereas*, the Town of Porter (“Town”) and the \_\_\_\_\_ (“facility owner”) wish to enter into an agreement to provide for the long term maintenance and continuation of stormwater control measures approved by the Town for the below named project; and

*Whereas*, the Town and the facility owner desire that the stormwater control measures be built in accordance with the approved project plans and thereafter be maintained, cleaned, repaired, replaced and continued in perpetuity in order to ensure optimum performance of the components. Therefore, the Town and the facility owner agree as follows:

1. This agreement binds the Town and the facility owner, its successors and assigns, to the maintenance provisions depicted in the approved project plans which are attached as Schedule A of this agreement.
2. The facility owner shall maintain, clean, repair, replace and continue the stormwater control measures depicted in Schedule A as necessary to ensure optimum performance of the measures to design specifications. The stormwater control measures shall include, but shall not be limited to, the following: drainage ditches, swales, dry wells, infiltrators, drop inlets, pipes, culverts, soil absorption devices and retention ponds.
3. The facility owner shall be responsible for all expenses related to the maintenance of the stormwater control measures and shall establish a means for the collection and distribution of expenses among parties for any commonly owned facilities.
4. The facility owner shall provide for the periodic inspection of the stormwater control measures, no less than once in every five year period, to determine the condition and integrity of the measures. Such inspection shall be performed by a Professional Engineer licensed by the State of New York. The inspecting engineer shall prepare and submit to the Town within 30 days of the inspection, a written report of the findings including recommendations for those actions necessary for the continuation of the stormwater control measures.
5. The facility owner shall not authorize, undertake or permit alteration, abandonment, modification or discontinuation of the stormwater control measures except in accordance with written approval of the Town.
6. The facility owner shall undertake necessary repairs and replacement of the stormwater control measures at the direction of the Town or in accordance with the recommendations of the inspecting engineer.
7. The facility owner shall provide to the Town within 30 days of the date of this agreement, a security for the maintenance and continuation of the storm water control measures in the form of (a Bond, letter of credit or escrow account).
8. This agreement shall be recorded in the Office of the County Clerk, County of Niagara together with the deed for the common property and shall be included in the offering plan and/or prospectus approved pursuant to \_\_\_\_\_.

9. If ever the Town determines that the facility owner has failed to construct or maintain the stormwater control measures in accordance with the project plan or has failed to undertake corrective action specified by the Town or by the inspecting engineer, the Town is authorized to undertake such steps as reasonably necessary for the preservation, continuation or maintenance of the stormwater control measures and to affix the expenses thereof as a lien against the property.

10. This agreement is effective\_\_\_\_\_.